

**No. 13268**

---

**United States  
Court of Appeals  
for the Ninth Circuit**

**JOHN O. PETTERSON,**

**Appellant,**

**vs.**

**ALASKA STEAMSHIP COMPANY, INC., a cor-  
poration,**

**Appellee.**

---

**Apostles on Appeal**

---

**Appeal from the United States District Court for the Western  
District of Washington, Northern Division.**

## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer to Libel .....	6
Appeal:	
Assignments of Error on .....	26
Bond for Costs on (Filed March 11, 1952) ...	19
Certificate of Clerk to Apostles on .....	28
Certificate of Clerk to Second Supplemental Apostles on .....	31
Certificate of Clerk to Supplemental Apostles on .....	30
Citation on .....	5
Order Allowing .....	19
Notice of (Dated Feb. 4, 1952) .....	18
Praeceptum on .....	27
Statement of Points and Designation of Rec- ord on (USCA) .....	188
Assignments of Error .....	26
Bond for Costs on Appeal, filed March 11, 1952	19



ii.

Certificate of Clerk to Apostles on Appeal....	28
Second Supplemental .....	31
Supplemental .....	30
Citation on Appeal .....	5
Decision, Transcript of Court's Oral.....	20
Designation of Record; Statement of Points and (USCA) .....	188
Findings of Fact and Conclusions of Law....	13
Judgment .....	17
Libel in Personam .....	3
Names and Addresses of Proctors.....	1
Notice Allowing Appeal .....	19
Notice of Appeal, dated Feb. 4, 1952.....	18
Notice of Trial Amendment.....	9
Praceipe .....	27
Statement of Points and Designation of Record (USCA) .....	188
Subpena:	
Issued to U. F. Oldham, Oct. 5, 1951.....	8
Issued to J. M. Shay, Oct. 30, 1951.....	10
Issued to C. W. Logue, Oct. 30, 1951.....	11
Issued to Mr. W. Woll, Oct. 30, 1951.....	12
Transcript of Court's Oral Decision.....	20

iii.

Transcript of Proceedings, Oct. 31, 1951 .....	32
--	----

Exhibit for Libelant:

2—Medical Report of Dr. Ernest M. Burgess (Excerpts) .....	143
---	-----

Exhibit for Respondent:

A-3—Medical Report of Dr. J. W. Miller (Excerpts) .....	142
--	-----

Witnesses:

Bjornson, Gilbert

—direct .....	145
—cross .....	152
—redirect .....	158
—recross .....	159

Buckner, H. T.

—direct .....	160
—cross .....	163
—redirect .....	165

Gore, Richard A.

—direct .....	166
—cross .....	170

Logue, C. W.

—direct .....	126
—cross .....	132

iv.

Transcript of Proceedings—(Cont'd)

Witnesses—(Cont'd)

Oldham, Vernon Frank

—Deposition ..... 41

Pettersen, John O.

—direct ..... 70

—cross ..... 96

—redirect ..... 111

—recross ..... 115

—recalled, direct ..... 172

—cross ..... 173

—redirect ..... 173

Rigney, Paul A. (Nov. 2, 1951)

—direct ..... 178

—cross ..... 179

Woll, William R.

—direct ..... 115

—cross ..... 124

Transcript of Proceedings, Nov. 2, 1951..... 176

Transcript of Proceedings, Nov. 9, 1951..... 181

Proceedings in U.S.C.A. for the Ninth Circuit	193
Order of submission	193
Order directing filing of opinion and filing and re- cording of judgment	193
Opinion, Denman, J.	194
Judgment	200
Clerk's certificate	201
Order granting certiorari	202

**NAMES AND ADDRESSES OF PROCTORS**

**Messrs. BASSETT, GEISNESS and VANCE,**  
**Proctors for Appellant,**  
**811 New World Life Bldg.,**  
**Seattle 4, Washington.**

**Messrs. BOGLE, BOGLE & GATES,**  
**Proctors for Appellee,**  
**603 Central Building,**  
**Seattle 4, Washington.**

**In the District Court of the United States for the  
Western District of Washington,  
Northern Division**

**In Admiralty—No. 16,575**

**JOHN O. PETTERSON,** Libelant,

**vs.**

**ALASKA STEAMSHIP COMPANY, INC.,**  
a corporation, Respondent

**LIBEL IN PERSONAM**

**Suit by Seaman to Recover Indemnity for Personal Injuries Without Prepayment of Costs.  
28 USCA 827).**

**For cause of action libelant alleges:**

**I.**

At all times herein mentioned respondent was and still is a corporation organized and existing under the laws of the State of Washington, and engaged in business in King County, State of Washington, and at all times herein mentioned the S.S. Susitna was a merchant ship in the possession of respondent and operated and employed by respondent in maritime commerce.

**II.**

On or about the 29th day of May, 1950, while said vessel was employed by respondent as aforesaid, said vessel was not seaworthy and its appliances and gear were defective in that a certain block, for reasons unknown to libelant, was weak and unable to carry strains which a block of its size and type should have carried. On said date at about 10 or 11 o'clock in the evening, said block



carried away while being used at the number 2 hatch of said vessel and while under a strain which a block of said size and type could have sustained without breaking were it not defective. At said time, libelant was working aboard said vessel, as an employee of a company other than respondent, in the capacity of a foreman supervising the work of longshoremen engaged in discharging cargo from the number 2 hold of said vessel and while libelant was in the course of said employment he was struck by gear released when said block carried away and sustained a fracture of his right leg, crushing of the tissues in his right leg and causing general shock.

### III.

Immediately prior to his injury libelant was a well and able bodied man capable of earning and actually earning about \$6,000.00 per year as a longshoreman. As a direct and proximate result of said injury, libelant has suffered great pain, has been totally disabled at all times since said injury and from engaging in any gainful occupation, will always be totally disabled from engaging in the work of his regular occupation of longshore foreman, will always be disabled to a substantial degree from engaging in any gainful occupation and will always suffer pain in and limitation of use of his right leg, all to plaintiff's damage in the sum of \$35,000.00.

### IV.

All and singular the premises are true and within the admiralty jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that citation in due form of law may issue against the respondent herein, citing it to appear and answer in the premises and that this Court will decree the payment by said respondent to the libelant of the sum of \$35,000.00, together with interest and costs and that the libelant have such other and further relief as may be just.

/s/ JOHN GEISNESS,

/s/ BASSETT & GEISNESS,

Proctors for Libelant.

Duly Verified.

[Endorsed]: Filed March 13, 1951.

---

**CITATION ON APPEAL**

Cause No. 15,575

Western District of Washington—ss.

The President of the United States of America to the Marshal of the United States for the Western District of Washington, Greeting:

Whereas a Libel hath been filed in the United States District Court for the Western District of Washington, on the 13th day of March, A.D. 1951, by John O. Petterson, Libelant, vs. Alaska Steamship Company, Inc., a corporation, Respondent, in a certain action, civil and maritime, for damages therein alleged to have been sustained by the said Libellant, amounting to Thirty Five Thousand (\$35,000.00) Dollars and praying that a Citation may issue against the said Respondent, pursuant to the rules and practice of this Court:

Now Therefore, We do hereby empower and strictly charge and command you, the said Marshal, that you cite and admonish the said respondent, if it shall be found in your district, that it be and appear before the said District Court, on Monday, the 2nd day of April, A.D. 1951, at ten o'clock in the forenoon of said day, at the Court Room thereof, at Seattle, then and there to answer the said Libel, and to make its allegations in that behalf and have you then and there this writ, with your return endorsed thereon.

Witness, the Hon. John C. Bowen, Judge of said Court, at the City of Seattle, in said Western District of Washington, this 13th day of March, A.D. 1951.

MILLARD P. THOMAS,  
Clerk.

/s/ By LOIS M. STOLSEN,  
Deputy Clerk.

Marshal's Return attached.

[Endorsed]: Filed March 23, 1951.

---

[Title of District Court and Cause.]

### ANSWER

Comes Now Alaska Steamship Company, a corporation, and for answer to the libel on file herein, admits, denies and alleges as follows:

#### I.

Answering Article I, respondent admits the same.

II.

Answering Article II, respondent denies the same.

III.

Answering Article III, respondent has no information or knowledge sufficient to form a belief and therefore denies the same.

Further Answering the libel of the libelant and by way of a First Affirmative Defense thereto, respondent alleges, that at the time of alleged injury to the libelant, libelant was an employee and foreman of Alaska Terminals and Stevedoring Company, a corporation, which had an independent contract with respondent to stevedore the S.S. Susitna; that respondent had turned over to the said Alaska Terminals and Stevedoring Company the exclusive control and management of the stevedoring operations on said vessel; that under said independent contract libelant's employer Alaska Terminals and Stevedoring Corporation was obliged to and did furnish all necessary gear and equipment in the execution of its contract of stevedoring; that the snatch block which injured the libelant was furnished by and owned by the said Alaska Terminal and Stevedoring Company, a corporation; that if the libelant has been injured and/or damaged as in his libel alleged, the libelant's sole and exclusive remedy for said injuries is furnished by the Longshoremen and Harbor Workers Compensation Act, under which said Act, the libelant has heretofore received Workmen's Compensation payments.

Wherefore, having fully answered the libel of the

libelant respondent prays that it may be dismissed and recover its costs and disbursements herein to be taxed.

/s/ BOGLE, BOGLE & GATES,  
Proctors for Respondent Alaska  
Steamship Company

Affidavit of Verification attached.

Acknowledgment of Service attached.

[Endorsed]: Filed April 6, 1951.

District Court of the United States, Western  
District of Washington

**CIVIL SUBPENA**

To: V. F. Oldham, 2512 20th Avenue South, Seattle, Washington:

You Are Hereby Commanded to appear in the District Court of the United States for the Western District of Washington, at the courthouse in the city of Seattle, in said District, on the 30th day of October, A.D. 1951, at ten o'clock a.m. of said day, then and there to testify on behalf of the Libelant in a suit pending in said Court wherein John O. Petterson is libelant, and Alaska Steamship Company, Inc., is respondent.

Witness, the Honorable John C. Bowen, District Judge of the United States, this 5th day of October,



A.D., 1951, and in the 176th year of the Independence of the United States of America.

[Seal]

MILLARD P. THOMAS,  
Clerk.

/s/ By TRUMAN EGGER,  
Deputy Clerk.

Marshal's Return attached.

[Endorsed]: Filed October 16, 1951.

[Title of District Court and Cause.]

### NOTICE OF TRIAL AMENDMENT

Notice is hereby given that on the trial of the above entitled cause, the respondent Alaska Steamship Company, Inc., will move to amend its answer to include a Second Affirmative Defense reading as follows:

"Further answering the libel of the libelant and by way of a Second Affirmative Defense thereto, respondent alleges that if libelant has been injured and/or damaged as in his libel alleged, said injuries and/or damages were proximately caused by and contributed to by the libelant in failing to take proper precautions for his own safety, namely that he placed himself in a position of danger in the "bight of the line" and that he knew or should have known in the exercise of reasonable care that such position was a point of danger. Further, that



it was not necessary for libelant to stand in said position and that there were safe positions aboard the vessel open to him."

/s/ BOGLE, BOGLE & GATES

/s/ ROBERT V. HOLLAND,

Attorneys for Respondent, Alaska  
Steamship Company

Acknowledgment of Service attached.

[Endorsed]: Filed October 31, 1951.

District Court of the United States, Western  
District of Washington, Northern Division

**CIVIL SUBPENA**

Cause No. 15,575

To: Mr. J. M. Shay, 1729 Boylston Ave., Apartment  
204, Seattle, Washington:

You Are Hereby Commanded to appear in the District Court of the United States for the West. Dist. of Washington, at the courthouse in the city of Seattle, in said District, on the 31st day of October, A.D., 1951, at 10:00 o'clock a.m. of said day, then and there to testify on behalf of the Libelant in a suit pending in said Court wherein John O. Petterson is Libelant and Alaska S.S. Co., Inc., a corp., is Respondent.

Witness, the Honorable William J. Lindberg,  
District Judge of the United States, this 30th day

of October, A.D. 1951, and in the 176th year of the Independence of the United States of America.

**MILLARD P. THOMAS,**  
Clerk.

/s/ By **LOIS M. STOLSEN,**  
Deputy Clerk.

Marshal's Return attached.

[Endorsed]: Filed October 31, 1951.

---

District Court of the United States, Western  
District of Washington, Northern Division

Cause No. 15,575

**CIVIL SUBPENA**

To: Mr. C. W. Logue, Commercial Hotel, 2nd and  
Virginia, Seattle, Washington, or 8540 114th  
South:

You Are Hereby Commanded to appear in the District Court of the United States for the West. Dist. of Washington, at the courthouse in the city of Seattle, in said District, on the 31st day of October, A.D. 1951, at 10:00 o'clock a.m. of said day, then and there to testify on behalf of Libelant in a suit pending in said Court wherein John O. Pettersson is Libelant and Alaska S.S. Co., Inc., a corp., is Respondent:

Witness, the Honorable William J. Lindberg,  
District Judge of the United States, this 30th day

of October, A.D. 1951, and in the 176th year of the Independence of the United States of America.

**MILLARD P. THOMAS,**

Clerk.

/s/ By **LOIS M. STOLSEN,**

Deputy Clerk.

Marshal's Return attached.

[Endorsed]: Filed October 31, 1951.

District Court of the United States, Western  
District of Washington, Northern Division

Cause No. 15,575

**CIVIL SUBPENA**

To: Mr. W. Woll, Route 3, Box 85, Bellevue, Washington (Phone 44738 Bellevue):

You Are Hereby Commanded to appear in the District Court of the United States for the West. Dist. of Washington, at the courthouse in the city of Seattle, in said District, on the 31st day of October, A.D. 1951, at 10:00 o'clock a.m. of said day, then and there to testify on behalf of the Libelant in a suit pending in said Court wherein John O. Petterson is Libelant and Alaska S.S. Co., Inc., is Respondent.

Witness, the Honorable William J. Lindberg,  
District Judge of the United States, this 30th day

of October, A.D. 1951, and in the 176th year of the Independence of the United States of America.

**MILLARD P. THOMAS,**

Clerk.

/s/ By **LOIS M. STOLSEN,**

Deputy Clerk.

Marshal's Return attached.

[Endorsed]: Filed October 31, 1951.

---

[Title of District Court and Cause.]

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above entitled cause came regularly on for trial before the undersigned Judge of the above entitled Court on Wednesday, the 31st day of October, 1951, at the hour of 10:00 a.m., the libelant being present in person and represented by John Geisness, one of his proctors, and respondent being represented by Robert Holland, one of its proctors, and evidence both oral and documentary having been adduced by the respective parties and the Court having heard the arguments and statements of counsel and considered said evidence and said arguments and statements and being fully advised in the premises, now makes the following

### **FINDINGS OF FACT**

At all times herein mentioned respondent was and still is a corporation organized and existing under the laws of the State of Washington, and



engaged in business in King County, State of Washington, and at all times herein mentioned the S.S. Susitna was a merchant ship in the possession of respondent and operated and employed by respondent in maritime commerce.

## II.

On May 29, 1950, while said vessel was being employed by respondent as aforesaid, employees of Alaska Terminal and Stevedoring Company, an independent contractor, including libelant, were aboard said vessel loading cargo in the vicinity of the number two hatch with the mutual consent and approval of respondent and said stevedoring company. At said time said Stevedoring Company was authorized by respondent to use its own gear or the gear of the ship in said loading operation, at its option. Shortly after 7:00 o'clock in the evening of said day said employees rigged a snatch block which had been standing or lying unused upon the deck of said vessel near said number two hatch. Said block was rigged as block number two in the diagram introduced in evidence herein as libelant's exhibit number one. There was no proof as to the ownership of said block. Said block was of a type often found both as a part of ships gear aboard such vessels as the S.S. Susitna and also as a part of stevedoring company gear. After said block was rigged as hereinabove mentioned the same was used by said employees of the stevedoring company in usual and common cargo loading operations and was used in the customary and usual manner in such operations and no "two-blocking" occurred. There

was no proof of the condition of said block prior to its breaking, apart from such inferences as might be drawn from the facts hereinabove found, and there was no proof that said block had or had not been inspected by anyone at any time prior to the accident. Said block was of a type ordinarily and customarily used and proper for the use to which it was being put upon the occasion in question. In the course of said use said block broke and came off the port guy line, which ran through it, and said guy line struck libelant and fractured his right leg and crushed the soft tissues in his right leg and threw him into the air so that he came down on the deck of said ship on his head and right shoulder.

### III.

That the snatch block in question, at the time of the accident, was not under the control or supervision of the respondent but was under the exclusive control and supervision of the libelant, his employer and his employer's agents.

### IV.

Immediately prior to his injury libelant was a well and able-bodied man 73 years of age capable of earning and actually earning about \$6,000.00 per year as a longshoreman. As a direct and proximate result of said injury, libelant has suffered great pain, has been totally disabled at all times since said injury from engaging in any gainful occupation, although he has tried to work and will always be partially disabled to a substantial degree from engaging in the work of his regular occupation of longshore foreman, will always be disabled to some



degree from engaging in any gainful occupation and will always suffer pain in and limitation of use of his right leg.

V.

All and singular the premises are true and within the admiralty jurisdiction of the United States and of this Honorable Court.

From the foregoing Findings of Fact the Court now makes the following:

CONCLUSIONS OF LAW

I.

That the parties hereto and subject matter are within the admiralty jurisdiction of this Court.

II.

That the libel herein should be dismissed with prejudice and the respondent should have and recover its costs.

Done in Open Court this 21st day of January, 1952.

/s/ WILLIAM J. LINDBERG,  
Judge.

Approved as to form:

/s/ JOHN GEISNESS,

/s/ BASSETT, GEISNESS & VANCE,  
Proctors for Libelant.

Presented by; Not approved as to Substance

/s/ ROBERT V. HOLLAND,

Of Proctors for Respondent.

Acknowledgment of Service attached.

[Endorsed]: Filed January 21, 1952.

In the District Court of the United States for the  
Western District of Washington, Northern  
Division

In Admiralty—No. 15,575

JOHN O. PETTERSON,

Libelant,

vs.

ALASKA STEAMSHIP COMPANY, INC.,  
a corporation,

Respondent.

### JUDGMENT

This matter having come on to be heard before the Honorable William J. Lindberg, one of the judges of the above entitled court, on the 31st day of October, 1951, at Seattle, Washington; the libelant being represented by his proctors, Bassett, Geisness & Vance, and the respondent, Alaska Steamship Company being represented by its proctors, Bogle, Bogle & Gates and Robert V. Holland; and the court having heretofore entered its Findings of Fact and Conclusions of Law herein, now therefore

It Is Hereby Ordered, Adjudged and Decreed that the libel herein be and the same hereby is dismissed with prejudice and with costs.

Done in Open Court this 21st day of January, 1952.

/s/ WILLIAM J. LINDBERG,  
Judge.

Presented by:

**/s/ ROBERT V. HOLLAND,**  
**Of Proctors for Respondent.**

Approved as to form:

**/s/ JOHN GEISNESS,**  
**/s/ BASSETT, GEISNESS & VANCE,**  
**Proctors for Libelant.**

**[Endorsed]: Filed January 21, 1952.**

**[Title of District Court and Cause.]**

### **NOTICE OF APPEAL**

**To: Bogle, Bogle & Gates and Robert V. Holland,**  
**Proctors for Respondent; and**

**To: The Clerk of the Above Entitled Court:**

Please take notice that John O. Petterson, the libelant in the above entitled cause, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final decree of this court made and filed herein the 21st day of January, 1952 and entered in the admiralty docket of said court January 22, 1952, and from each and every part of said decree.

**Dated at Seattle, Washington, this 4th day of February, 1952.**

**/s/ BASSETT, GEISNESS & VANCE**  
**Proctors for Libelant**

**Acknowledgment of Service attached.**

**ORDER ALLOWING APPEAL**

The within appeal is hereby allowed this 10th day of March, 1952.

/s/ **WILLIAM J. LINDBERG,**  
United States District Judge.

[Endorsed]: Filed March 10, 1952.

[Title of District Court and Cause.]

**BOND FOR COSTS ON APPEAL**

Know All Men By These Presents:

That John O. Petterson, the above named libelant, as Principal, and Continental Casualty Company, a corporation authorized to act as surety within the State of Washington, as Surety, are held and firmly bound unto the United States of America, for the use and benefit of all persons who may be concerned, in the full sum of Two Hundred and Fifty (\$250.00) Dollars, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

The condition of this obligation is such that:

Whereas, Libelant above named has prosecuted an appeal to the United States Court of Appeals for the Ninth Circuit, from a decree of the District Court of the United States for the Western District of Washington, made and filed the 21st day of January, 1952, and entered in the admiralty docket of said Court January 22, 1952, in a suit wherein, John O. Petterson is libelant against

Alaska Steamship Company, a corporation, in personam, as respondent:

Now Therefore, the condition of this obligation is such that if the above named libelant, John O. Petterson, shall prosecute said appeal with effect, and pay all costs which may be awarded against him as to such appeal if the appeal is not sustained, then this obligation shall be void, otherwise, the same shall be and remain in full force and effect.

In Witness Whereof, the foregoing obligation has been subscribed, sealed and delivered this 10th day of March, 1952, at Seattle, Washington.

**JOHN O. PETTERSON**

/s/ By **JOHN GEISNESS,**

His Proctor.

[Seal]

**CONTINENTAL CASUALTY  
COMPANY**

/s/ By **W. H. HICKS,**

Its Attorney-in-Fact.

[Endorsed]: Filed March 11, 1952.

[Title of District Court and Cause.]

### DECISION

Transcript of Court's oral decision in the above entitled and numbered cause, given at 2:00 o'clock p.m., on the 9th day of November, 1951, by The Honorable William J. Lindberg, United States District Judge, at Seattle, Washington.

Appearances: Robert O. Geisness, Esq., of Bas-



sett and Geisness, Seattle, Washington, appeared on behalf of Libelant; and Robert V. Holland, Esq., of Bogle, Bogle and Gates, Seattle, Washington, appeared on behalf of Respondent.

Whereupon, the following proceedings were had, to-wit:

**Proceedings**

The Court: The Court is in a position to render its decision, and the Court, after considering the evidence and the law applicable thereto, must find for the Respondent.

The Libelant has failed to establish through the evidence introduced that the snatch block involved which apparently caused the accident and injury to the Libelant belonged to or was part of the ship gear of the Respondent.

Such finding was conceded in effect by Counsel for Libelant in his argument.

Proceeding on that assumption, Counsel for Libelant argued that the logic or reasoning of the case of *Seas Shipping Company, Inc., vs. Sieracki*, 328 U.S. 85, would impose the obligation of seaworthiness of the vessel upon Respondent as to gear—in this case a snatch block—not belonging to Respondent but being used by the stevedore in loading the ship.

The Court can not agree that the Supreme Court ruling in that case would justify such a conclusion. Some of the language used in that case may indicate the wisdom or logic of placing such responsibility upon a ship owner by legislation, but this



Court does not believe that existing law imposes such an obligation.

The tendency of the courts since the Sieracki decision, as indicated by *Grasso vs. Lorentzen*, 149 Fed. 2d 127, wherein certiori was denied by the Supreme Court, and subsequent decisions, appears to be to restrict the liability of the ship owner as to seaworthiness after he has surrendered control of part of his ship to a stevedore who then takes charge of loading and unloading. See particularly *Lauro vs. U.S.A.*, 182 Fed. 2d 32.

As to Respondent's second affirmative defense, namely that Libelant's injury was proximately caused by and contributed to by the Libelant, the Court finds that the evidence does not establish that Libelant was guilty of contributory negligence.

The Court, in rendering this decision, doesn't know whether Counsel has in mind other findings. The Court's decision, as expressed, would conclude the matter insofar as this Court is concerned.

In the event of an appeal, you may want findings on other matters.

Mr. Geisness: We would like to have a finding that the block was in fact defective. Of course, that wouldn't be material at this stage because we couldn't recover under the Court's decision on the law, but, if we did appeal, of course, it might become material if the appellate court took a different view.

I suppose that the finding I would ask would be that the block was defective and that the injuries

to the Libelant were sustained by reason of the block being defective.

The Court: Well, without reaching a conclusion on that at this time, the Court, in considering that matter, felt that the evidence as presented—the block not being before the Court—makes it rather difficult to make a finding that could be considered conclusive unless the testimony of Logue that the top or the side of the snatch block had come off would indicate that it was defective.

There was some testimony, the Court recalls, brought out on cross examination, by that same witness to the effect that it was possible that the runner could have been improperly placed over the lip of the block and the side of the block thereby pulled off. The Court wasn't inclined to give that statement particular weight because the witness merely stated this could have been but, so far as he knew, this wasn't the solution.

So, the Court would be inclined to find that the block, from what testimony there was, was defective, although I think you will agree that there was very little evidence on which a finding could be made.

Mr. Geisness: It is purely a matter of inference, I think.

The Court: Yes, it is purely a matter of inference, and the Court concluded, having decided the issue as a matter of law, that I would omit a finding on that issue.

I recognize, of course, that the question of law here is one which might go otherwise and, if there

is an appeal and it is advisable to make additional findings of fact, the Court will consider proposals.

Mr. Holland: If the Court pleases, I was intending to ask the Court to make a finding that the evidence in the case did not establish that there was any defect in the block prior to the accident, which, I think, is the absolute truth so far as what evidence was put in the case.

The fact that the block in fact broke, I don't believe, even establishes any inference that it was defective, because lots of things break which are not defective.

The Court: The Court meant to add that there was no positive evidence that the block was defective.

I am inclined to think the Court will not make a finding on that matter, one way or the other.

I don't believe it is necessary under this conclusion.

Mr. Geisness: Well, I agree it is not necessary to reach your result here, of course.

Mr. Holland: Could the Court make the finding that there was no testimony in the case relative to the condition of the block prior to the accident?

The Court: Yes, I think that is without question.

Mr. Holland: I think that is correct.

Mr. Geisness: Would the Court make a finding that the operation was, in all respects, the usual, normal operation being conducted in the usual and normal fashion and that this was the block commonly used for that purpose?

The Court: I am wondering if a finding might

be made to the effect that, as the Respondent has requested, there was no indication of defect and that there was no indication of inspection having been made.

All witnesses except one said the block disappeared.

Well, I think, Mr. Geisness, that it would be rather difficult. If you wish to propose a finding, Mr. Geisness, as to that block, the Court might take a look at it with the understanding that I don't know whether the Court will make a finding or not.

The only testimony in the record is of one witness wherein he saw that the upper portion of the block was off.


Whatever the inference may be, the appellate court can draw it as readily as this court.

Mr. Geisness: I don't know. If the Court finds the facts from which inferences would have to be drawn—that is, if the Court found here it was defective, or not defective, the Court would have to be drawing that inference from certain facts.

If the Court finds those facts, such as there was no proof of prior instances and no prior inspection, and that the block was being used in the usual manner as those blocks are used, then I suppose the appellate court can make the inference, as well as this court. I don't know if that would be satisfactory.

The Court: All right. If you desire those findings, you might make them that way.

Mr. Geisness: I will think them over and if we want to add any others, we will propose them.



The Clerk: Can you have the findings here November 23rd?

Mr. Holland: 10:00 a.m., November 23rd?

The Clerk: Yes.

(Whereupon, hearing was concluded).

Clerk's Certificate attached.

[Endorsed]: Filed March 13, 1952.

---

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

The appellant, John O. Petterson, hereby assigns error in the proceedings, decrees, orders and decisions of the District Court in the above entitled action as follows:

(1) The court erred in failing to find that the block that broke and caused libelant to suffer the injuries that are the subject of the above suit was defective.

(2) The Court erred in failing to find that the block hereinabove mentioned was a part of the gear of the S.S. Susitna, the vessel aboard which said injuries to libelant occurred.

(3) The court erred in failing to make a conclusion of law that respondent warranted as to libelant that said block was free from defects.

(4) The court erred in failing to make a conclusion of law that libelant is entitled to recover in-



demnity for the above mentioned personal injuries sustained by him.

(5) The court erred in dismissing libelant's suit.

(6) The court erred in failing to decree compensatory damages to libelant.

/s/ JOHN GEISNESS

/s/ BASSETT, GEISNESS & VANCE

Proctors for Libelant

Acknowledgment of Service attached.

[Endorsed]: Filed March 28, 1952.

[Title of District Court and Cause.]

**PRAECIPE**

To: Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington:

We hereby request that the record on appeal in the above entitled cause shall include, in addition to the apostles already transmitted:

(1) All original exhibits.

(2) Notice of Appeal dated February 4, 1952, and filed herein March 10, 1952.

(3) Order allowing Appeal made and entered March 10, 1952.

(4) Motion for Order of Transmittal of original exhibits on appeal.

(5) Order for transmittal of original exhibits on appeal.

(6) Appellant's assignment of errors.

(7) This praecipe.

/s/ JOHN GEISNESS,

/s/ BASSETT, GEISNESS & VANCE  
Proctors for Libelant

Acknowledgment of Service attached.

[Endorsed]: Filed March 28, 1952.

[Title of District Court and Cause.]

**CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT TO APOSTLES ON APPEAL**

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting herewith as the Apostles on Appeal in the above entitled cause, all of the original papers in the file dealing with said action or proceeding, the same being the complete record on file in said cause, (excluding exhibits), and that said original papers constitute the record on appeal from the Judgment of January 21, 1952, dismissing with prejudice and costs, to the United States Court of Appeals at San Francisco, said original papers being identified as follows:

1. Libel in Personam, filed March 13, 1951.
2. Praeipe for process, filed March 13, 1951.
3. Marshal's return on citation, filed March 23, 1951.
4. Answer of Respondent, filed April 6, 1951.
5. Cost Bond, filed April 9, 1951. (Fireman's Fund Ind. Co. \$250.00)
- 5-a. Deposition of John O. Petterson at instance of Respondent, filed April 19, 1951.
6. Praeipe for subpoena, *Olaham*, filed October 5, 1951.
7. Marshal's Return on subpoena, *Oldham*, filed October 16, 1951.
8. Deposition of Vernon Frank Oldham (at the instance of Libelant), filed October 30, 1951.
9. Praeipe for Subpoena, *Woll*, filed October 30, 1951.
10. Praeipe for process, filed October 30, 1951.
11. Praeipe for process, filed October 30, 1951.
12. Stipulation for reimbursement of Fireman's Fund Ins. Co., filed October 31, 1951.
13. Notice of Trial Amendment, filed October 31, 1951.
14. Respondent's Trial Memorandum of Authorities, filed October 31, 1951.
15. Marshal's Return on Subpoenas, *Shay* and two, filed October 31, 1951.

16. Notice of Appeal and Order Allowing Appeal, filed January 17, 1952.

17. Findings of Fact and Conclusions of Law, filed January 21, 1952.

18. Judgment, filed January 21, 1952.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office on behalf of Appellant for preparation of the apostles on appeal herein, to-wit: Notice of Appeal, \$5.00; and that said amount has been paid to me by proctors for the Appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this . . . . day of February, 1952.

[Seal]

MILLARD P. THOMAS,  
Clerk.

/s/ By TRUMAN EGGER,  
Chief Deputy.

[Title of District Court and Cause.]

**CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO SUPPLEMENTAL APOSTLES  
ON APPEAL**

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting

herewith supplemental to the Apostles on Appeal in the above entitled cause, to the United States Court of Appeals at San Francisco, the following additional papers filed in my office subsequent to transmission of the record, to wit:

19. Notice of Appeal with Order Allowing, endorsed thereon, filed 3-10-52.

20. Bond for Costs on Appeal (\$250.00, Con., Cas. Co.), filed 3-11-52.

21. Court Reporter's Transcript of Court's Oral Decision, filed 3-13-52.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 14th day of March, 1952.

[Seal]

MILLARD P. THOMAS,

Clerk.

/s/ By TRUMAN EGGER,  
Chief Deputy.

[Title of District Court and Cause.]

**CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO SUPPLEMENTAL APOSTLES  
ON APPEAL**

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting herewith supplemental to the Apostles on Appeal



in the above entitled cause, to the United States Court of Appeals at San Francisco, the following additional papers filed in my office subsequent to transmission of the record, to-wit:

22. ~~Court Reporter's~~ Transcript of Proceedings, filed March 28, 1952.

23. Assignment of Errors, filed March 28, 1952.

24. Praecipe for Supplemental Record on Appeal, filed March 28, 1952.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 31st day of March, 1952.

[Seal]

MILLARD P. THOMAS,

Clerk

/s/ By TRUMAN EGGER,  
Chief Deputy.

In the District Court of the United States for the  
Western District of Washington, Northern  
Division

No. 15,575

JOHN O. PETTERSON,

Libellant,

vs.

ALASKA STEAMSHIP COMPANY, INC.,  
a Corporation,

Respondent.

Transcript of Trial Proceedings had before The Honorable William J. Lindberg, United States District Judge, commencing at 10:00 o'clock, a.m., on

the 31st day of October, 1951, at Seattle, Washington.

Appearances: John Geisness, Esq., of Bassett, Geisness and Vance, 811 New World Life Building, Seattle 4, Washington (ELiot 1844), appeared on behalf of Libelant; and Robert V. Holland, Esq., of Bogle, Bogle and Gates, Sixth Floor, Central Building, Seattle, Washington (ELiot 2642), appeared on behalf of Respondent.

Whereupon, the following proceedings were had, to-wit: [1\*]

### PROCEEDINGS

The Court: John O. Petterson, Libelant, vs. Alaska Steamship Company, Inc., a corporation, Respondent, No. 15575.

Mr. Holland: Both parties are ready, your Honor.

The Court: We will wait a few moments. There is a criminal matter that may come on.

(Whereupon, there was a brief pause in the hearing of the within-entitled and numbered cause, during which time the Court heard another matter, and the following proceedings were then had, to-wit:)

The Court: You may proceed.

Mr. Holland: Before Counsel starts:

I served on Counsel, yesterday, a notice of trial amendment.

"Notice is hereby given that on the trial of the

\* Page numbering appearing at top of page of original Reporter's Transcript of Record.

above entitled cause, the respondent Alaska Steamship Company, Inc., will move to amend its answer to include a Second Affirmative Defense reading as follows:

"Further answering the libel of the libelant and by way of a Second Affirmative Defense thereto, respondent [2] alleges that if libelant has been injured and/or damaged as in his libel alleged, said injuries and/or damages were proximately caused by and contributed to by the libelant in failing to take proper precautions for his own safety, namely that he placed himself in a position of danger in the "bight of the line" and that he knew or should have known in the exercise of reasonable care that such position was a point of danger. Further, that it was not necessary for libelant to stand in said position and that there were other safe positions aboard the vessel open to him."

I may change, Counsel, if I may, to delete the word "other" in the last sentence so as to read:

"\* \* \* and that there were safe positions aboard the vessel open to him." [3]

Mr. Geisness: All right.

The Court: Any objection, Mr. Geisness?

Mr. Geisness: No.

The Court: All right; it may be entered.

Mr. Holland: I would like to enter a stipulation, by both parties, relating to payments other than to libelant.

The Court: The stipulation may be filed.

Mr. Geisness: May it please the Court?

The Court: Mr. Geisness?

Mr. Geisness: This is an action to recover damages for personal injuries sustained by libelant.

The accident occurred May 29, 1950, here in Seattle on board a vessel of Alaska Steamship Company, the S. S. Susitna.

The libelant was a foreman employed by a stevedoring company. I think it is called Alaska Terminal and Stevedoring Company. That company is under contract with Alaska Steamship to load and unload the Alaska Steamship Company's ships, including this vessel, the Susitna.

The foreman had jurisdiction over one (1) hatch, and, in this instance, it was hatch, or hold, number two (2) of the ship.

The accident occurred when a snatch block, employed in the operation, broke.

The fact that it broke has left an inference which I don't think there is any dispute about, because the gear remaining and unbroken, that is, the strap holding the block and the line running [4] through the block, on the one hand, were both intact, so that it was necessary that the block break for the accident to happen.

The block disappeared completely, which would have happened if the block would break. It was thrown over the side as though thrown by a sling shot.

This block was being used as part of the rigging of the port guy on the ship, and the port guy is a line that runs from the top of the boom down

through the block and to a winch and it is used to pull the boom—tip of the boom—over to the port side of the ship.

Of course, there is a corresponding starboard guy which pulls the boom over to the star board in order to swing the load from port to starboard.

This port guy when from the tip of the boom aft to a point on the ship's rail, or near the ship's rail, and then across towards the center of the ship to the hatch combing where it went through the block which broke and from there it ran forward to another block, forward of the winches, and then back on the drum of the winch.

I have the deposition of one witness, a Vernon Frank Oldham, who is described as the rigger, among other things, and he has an extra block in his description of the way this thing was rigged, but I am going to read that first and then we will correct that error in his description of the rigging.

At the time the accident happened they were putting a tractor, estimated to weigh about eighteen (18) tons, on the deck of the ship. It was to be part of the deck cargo and the place was right against the port rail of the ship, and they had it raised just a short, few inches above the deck and they were pulling it over, the boom over with the port guy and had it almost exactly in the position they wanted it when the block broke, and libellant, who was standing near the load and actually in the bight of this guy, was struck by the guy when it snapped and it gave him a crushing injury to his leg—fractured his leg and threw him up in the air so



that he came down on his head and shoulders on the deck.

The theory of the case is that —

I should say this: That the evidence will be uncertain as to whether the block was the property of the Alaska Terminal and Stevedoring Company or the property of Alaska Steamship Company, owner of the vessel, and the theory of the case is that the libelant, although employed by the Stevedoring Company, was, for the purpose of this suit, a seaman employed in the work in question, and, as a seaman, he has the benefit of the ship owner's warranty of the seaworthiness of the vessel and freedom of equipment on the vessel from defects and this warranty of the ship owner is non-delegatable, so that, even if this block were the property of someone other than the steamship company, the ship owner owed to the libelant an absolute duty to furnish a block that was free from defect and we will show that the type of block was the type usually and commonly used for this type of work and used in the usual and proper fashion, and that there is no accounting for its breaking except on the theory that it was actually defective.

Libelant was seventy-four (74) years of age at the time [6] of the accident, a man of advanced years, but he was active and regularly engaged as a longshore foreman, and he earned about six thousand dollars (\$6,000.00) a year, and since that time he—since a ~~year~~ ago last May he—hasn't been able to do the work of his usual occupation at all.

He tried to go to sea. He has Captain's papers

and took a job as a mate on a ship but couldn't stand the amount of time on his feet necessary in that job, so that he had to give that up.

So that, for all practical purposes, he is totally disabled, at least totally disabled for the job he regularly followed.

And, I think, we will show that there is no reasonable probability that he will improve, but, rather, that his condition is permanently fixed.

I might, in my opening statement, say we rest our case on *Seas Shipping Company, Inc. v. Sieracki*, 1946 A. M. C. 698, decided by the United States Supreme Court April 22, 1946; and, I regret to say that I neglected to put down the official citation (\*), but I do have the volume here and I will obtain the citation.

The Court: You will obtain that during recess?

Mr. Geisness: Yes.

The Court: What is the title again?

Mr. Geisness: *Seas Shipping Company, Inc. v. Sieracki*, 1946 A. M. C. 698.

The Court: I have that. It was decided in 1946?

Mr. Geisness: Yes. May I proceed? [7]

The Court: Unless you wish to make a statement at this time, Mr. Holland.

Mr. Holland: I think not, except that I might state, in opening, that our theory in this case is that the *Sieracki* case referred to by Counsel extends the doctrine—as he stated, of seaworthiness owed by the vessel to seamen, it extends it—to long-

shoremen such as the libellant here, but, in extending that doctrine it did not intend to make the vessel any insurer of all the devices aboard the vessel, since that case was, in fact, based upon a device which was in the lower court found to be defective.

It is respondent's position in this case that we don't believe, at least, there would be any evidence of defect in the block in question, so that the mere fact that the block broke will not supplant the need for proof of any defect in the block, since, in this particular case, the respondent was not in complete charge and control of the block and its use, and, therefore, the lack of any proof of negligence or defect in the block can not be provided by the doctrine of *res ipsa loquitur*.

I have a brief that is almost finished and will be delivered in the morning and will be provided during the noon hour, and, further, I might advise Counsel, if he wishes, in the beginning for the convenience of the Court, for illustrative purposes, I have brought to the Court a block which we believe is at least similar to the block in question, although the question of identity is still up in the air. [8]

If Counsel wishes to use that as illustrative, I have no objection to his doing so at the opening of this case.

Mr. Geisness: It might be of some help.

Mr. Holland: Just so that we will know—the Court will know—what we are talking about.

Mr. Geisness: If you can make it available, it might turn out to be of some help.

The Court: You might introduce that then as an

exhibit as being illustrative of the type of block that was involved.

Mr. Holland: All right.

Mr. Geisness: That is agreeable.

The Clerk: Is it to be Libelant's exhibit?

Mr. Geisness: I suppose, since it is produced by them and they vouch for it, it may be marked as theirs.

The Clerk: Respondent's Exhibit Number A-1 marked for identification.

(Respondent's Exhibit Number A-1 marked for identification.)

The Clerk: And it is admitted, is it, your Honor?

The Court: This block then is being admitted as—I mean, is being offered as illustrative of a block involved in the accident here and is being admitted for that purpose on stipulation?

Mr. Holland: That is agreeable.

Mr. Geisness: Yes.

The Court: It is understood that this block is the same [9] type of block?

Mr. Holland: It is respondent's understanding, or information and belief, if the Court pleases. It may be that there may be some distinctions made through the testimony of witnesses, but at the present time we believe it is similar.

Mr. Geisness: That is my understanding, your Honor.

(Respondent's Exhibit Number A-1 admitted in evidence.)

The Court: You may proceed.

Mr. Geisness: The libelant moves that the deposition of Vernon Frank Oldham be published and read in evidence.

The Court: It will be so ordered.

Mr. Geisness: I will read the answers and you can read the questions.

Mr. Holland: All right.

The Court: Do you have a copy, Mr. Holland?

Mr. Holland: Yes, I do.

This was taken on behalf of libelant on October 19, 1951, of Vernon Frank Oldham.

All objections, on stipulation, were reserved except as to the form of the question and the responsiveness of the answers.

Mr. Geisness: All objections?

Mr. Holland: Yes. [10]

## DEPOSITION OF VERNON FRANK OLDHAM

Mr. Holland: Direct Examination by Mr. Geisness.

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.)

Q. State your full name, please?

A. Vernon Frank Oldham.

Q. And your address, please?

A. 2512 20th South.

Q. Here in Seattle?

A. Yes, sir.

Q. What is your occupation?

A. Longshoreman.



(Deposition of Vernon Frank Oldham.)

Q. Did you follow that occupation on May 29, 1950? A. Yes.

Q. Do you remember an accident that occurred on the SS Susitna about May 29, 1950, when John O. Petterson was injured? A. Yes.

Q. Did you witness the accident?

A. Yes, sir.

Q. And in the vicinity of what hatch did the accident occur?

A. At the forward end of No. 2 hatch.

Q. What operation was in progress at the [11] time of the accident?

A. Well, we was in the progress of landing a caterpillar.

Q. A caterpillar tractor? A. Yes.

Q. Have you any idea about how heavy that caterpillar was? A. About 18 ton.

Q. That, of course, is a heavy piece of machinery, but is it common that you load or unload such machinery?

A. Oh, yes, lots heavier than that at times.

Q. While we were waiting here we drew an outline or diagram of the gear that was being used, didn't we? A. Yes.

Q. I guess I did the actual drawing, but I did it under your direction, is that right?

A. Yes, sir.

Mr. Geisness: If the Court please, that is attached to the deposition, at the end of it, and, while the proof develops there is one error in it, we will offer it in evidence for illustrative purposes too.

(Deposition of Vernon Frank Oldham.)

The Court: Yes. Is there any objection?

Mr. Holland: No objection, your Honor. [12]

(Libelant's Exhibit Number 1 marked for identification and admitted in evidence.)

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.)

Q. Now, showing you what has been marked Libelant's Exhibit No. 1, is that a diagram or the diagram to which you just referred?

A. Yes, sir.

Q. Is that a pretty accurate representation of the rigging that was being used at the time of the accident?

A. Yes, sir. It is.

Q. Not, of course, drawn to true scale; that is, we didn't make any attempt to draw it accurately according to scale?

A. Oh, no.

Q. But otherwise it is an accurate representation of the situation?

A. Yes, sir.

Q. I think we better start with the tractor— Does that object marked "T" represent the tractor to which you referred?

A. Yes, sir.

Q. Running from the "T" up to the end of the boom, there appears to be a line. Does that [13] represent the line lifting that?

A. Yes, sir.

Q. Where does that line run to?

A. Down to the boom through a heel block on to the winch.

Q. Which winch does it run on to, what do you call it?

(Deposition of Vernon Frank Oldham.)

A. On the starboard side.

Q. Is that the one marked "Purchase"?

A. Yes, sir.

Q. It is also marked with a letter "E" in a circle, isn't it? A. Yes.

Q. How do you raise and lower that boom?

A. With the winch directly opposite of the purchase boom.

Q. Is that the one that says "Raise-Lower Boom"? A. Yes, sir.

Q. And it is also identified by a capital letter, "D" in a circle, is that true?

A. Yes, sir.

Mr. Holland: Mr. Holland: May I ask what the "E" and "D" indicate, if anything? Mr. Geisness: They identify the machine. Mr. Holland: [14] I mean, are they intended to be abbreviations of anything? Mr. Geisness: No.

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.)

Q. Winch D, and Winch E, which you just spoke about, were not directly involved in this accident? A. No, sir; none whatsoever.

Q. I just had you refer to them to eliminate them, really. A. Yes.

Q. Which cable or line was involved in the accident? How is it identified here?

A. The line you have marked "A".

Q. Which block was involved in this?

(Deposition of Vernon Frank Oldham.)

A. Block No. 2.

Q. I wonder if you would tell us how line "A" leads, beginning at either end, whichever you think would be better?

Before we do that, let's ask you this question: What is the function of line "A"?

A. To swing the boom from one side of the ship to the other.

Q. What furnishes the force or power for that?

A. The winch on the forward end of the hatch.

Q. How is that identified?

A. Well, the guy that holds the boom—

Mr. Holland: Mr. Holland: Just a minute. For the record, when you say "guy" you mean the same as Mr. Geisness calls the line?

Mr. Geisness: The Witness: Yes, it is a guy line; that is what they are called.

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.)

Q. You commonly just call it a guy?

A. Yes. It comes through a series of shives with the main lead coming to Block 1, going through Block 2, and then to Block 3, through a heel block, which is 4, and on to the winch at "B".

Q. Where were you going to land the tractor?

A. Well, the boom was—the tractor was set in line to be landed and they wanted to take it over about another foot offshore at the forward end of the hatch.

(Deposition of Vernon Frank Oldham.)

Q. Was the dock on the starboard side of the vessel?

A. Yes, sir.

Q. When you took it off, that was to swing [16] it further to port?

A. Yes, sir.

Q. How was the tractor spotted at the time the block broke? Was it where you wanted it, or what?

A. Yes, sir. It was just within a foot of where Petterson wanted it.

Q. Was that close to the rail?

A. Yes, sir.

Q. Can you tell us why this line led from Block 1 to Block 2, and then to Block 3, instead of just leading down to Block 1 and then directly over to 3?

A. Well, let's see: to keep the line away from the tractor when we were landing it.

Q. If that line had run directly from 1 to 3, would the line have been in the way of the tractor?

A. Yes, sir.

Q. In other words, you couldn't have gotten the tractor to where you wanted it?

A. Yes, sir.

.....

Q. Incidentally, was this whole operation the sort of operation that is regularly carried on on shipboard? [17]

A. Yes, sir, every day.

Q. I take it you were going to lay this tractor on the deck as what they call deck cargo?

A. Yes, sir; it was, and once it was landed it was stowed, as we call it.

Q. I notice that Block 1 is just about as far aft as the foot of the booms, you might say?



(Deposition of Vernon Frank Oldham.)

A. Yes, sir.

Q. What is the reason for having the block, like Block 1, situated that far aft?

A. Well, you have to have your block aft because after we get these blocks rigged once, we try to rig them so that we don't have to change to land another lift.

Q. Is that customary too? A. Yes, sir.

Q. We might just as well look at the starboard guy, too. How is that identified? A. "F."

Q. And it corresponds with "A", only it is on the other side of the ship, isn't that right?

A. Yes, sir.

Q. That guy line isn't directly involved in the accident, either? A. No, sir. [18]

Q. It starts with the tip of the boom apparently going to Block 5, 6, 7 and on to Winch "C", is that right? A. Yes, sir.

Q. It leads a little differently, has one less block?

A. Well, there was no cargo going on this side where the line would have been in the way. We always load the offshore side of the ship first.

Q. So there really are four winches involved in this whole operation? A. Yes, sir.

Q. But each does a separate thing?

A. Yes, sir.

Q. Do you know where that block came from?

A. No, sir, I don't.

Mr. Holland: The next question and answer, if the Court please, were objected to as leading.

(Deposition of Vernon Frank Oldham.)

The Court: What page is that on?

Mr. Holland: Page ten (10), line seventeen (17).

The Court: Well, the Court will overrule the objection.

(Whereupon, the following questions were read by Mr. Holland, and the following answers were read by Mr. Geisness.)

Q. Is it the kind of a block that is customarily [19] carried on a ship like that as a part of the ship's gear? A. Yes, sir.

Q. Let us refer specifically to the Susitna. Do you have any idea about what the Susitna carried in the way of gear to handle these types of cargo?

Mr. Holland: Mr. Holland: I object to the answer in that he is referring to "most of these," and not this particular vessel.

Mr. Geisness: The Witness: There is none of the Alaska Steamship vessels that has their own gear that stays with the ship all of the time. Every ship's gear is mixed up with other ships' gear on it.

There is ship's gear on the dock without ships' markings and with ships' markings on it.

Mr. Holland: Mr. Holland: That is objected to as not responsive.

Mr. Geisness: Mr. Geisness: Mr. Holland is making the point, as I understand the point, that I asked you as to what gear the Susitna herself carried at that time, and he objects that your answer isn't responsive to that question.

(Whereupon, the following questions were

(Deposition of Vernon Frank Oldham.)

read by Mr. [20] Holland, and the following answers were read by Mr. Geisness.)

Q. Could you tell us just what you did find on the Susitna? A. Well, I don't know.

Q. Now, let's turn to the question with reference to blocks of this type, the one that broke; what did you find on the ships or would you ordinarily find on the ships generally engaged in Alaskan trade by way of blocks which you find; would you find that kind of block among the gear, or wouldn't you?

A. Yes, sir.

Q. You would? A. Yes, sir.

Q. Is there any way you can identify one of these blocks as being a block attached to a particular vessel like the Susitna?

A. Well, the blocks, I don't know any way of identifying them, but other gear, such as the four-wheel trucks, they will have the name of the ship written on them.

Q. Do the blocks, do you know?

A. No, sir.

Q. Well, now, —

Mr. Holland: If the Court please, page twelve (12), [21] line fourteen (14), I objected to the last part of the answer as not responsive. It is on line sixteen (16).

Mr. Geisness: I think it is responsive, if the Court please, because the question simply is whether the blocks are marked in any way so that they can be identified, and he said the trucks have their name written on them, and then he goes on to say that

(Deposition of Vernon Frank Oldham.)

the different colored blocks are mixed up, just another way of saying they are not distinctively marked, although he says they usually use a particular paint to identify the ship but it doesn't identify the blocks.

The Court: The objection will be overruled.

(Whereupon, the following questions were read by Mr. Holland, and the following answers were read by Mr. Geisness.)

A. You find all colored blocks on the ships. They usually use paint to identify the ship and as I say, they are all mixed up, and you never know by the color.

• • • • •

Q. Do you know whether the gear from one ship is sometimes moved over and used on another?

A. Yes, sir; very often.

Q. Is it marked in any way then so as to identify it as belonging to the one ship, or is it changed in any way so that you could tell what ship it was then attached to?

A. Well, I think they have markings to tell [22] what ship it is, but I am not sure.

Q. Do you know whether there is any exchange of gear between the stevedoring company and the ships?

A. I know when you get gear from the dock lots of times you will get the gear from some ship that might be tied up some place.

Q. You say when you get gear from the dock:

(Deposition of Vernon Frank Oldham.)

do you know whose gear that is when you get it from the dock, the stevedoring company, or whose?

A. No, sir; we don't know.

Q. Some of it is, you say, marked with the ships' names.

A. Yes, sir.

Q. Is it kept separately on the dock, separated from the stevedoring company's gear?

A. I don't know. They have one big gear locker down there that you usually send them from when we want certain gear, but at other times they have to just pick it up off the dock wherever it may be.

Q. When you are working on a ship like the Susitna, do you sometimes use the Susitna's own gear?

A. Yes, sir. [23]

Q. And sometimes you get gear from the dock?

A. Yes, sir.

Q. Do you know what determines whether you use the Susitna's own gear, or whether you go to the dock? Is there some rule about it or is it just a matter of convenience?

A. Well, it is a matter of convenience. Usually the gear lockers of the Susitna and most of the Alaska ships are open, and if we need blocks, slings, or anything, we get them out of the ship's gear locker, because it is right close.

Q. And if they happen to run out or it is unhandy, for some other reason, then you take it from the dock?

A. Yes, sir.

Mr. Holland: Mr. Holland: Objected to as leading.



(Deposition of Vernon Frank Oldham.)

(Whereupon, the following questions were read by Mr. Holland, and the following answers were read by Mr. Geisness.)

Q. In view of his objection, maybe I had better ask you what determines it: under what circumstances, then, would you go to the dock to get gear?

A. Well, if the gear isn't available on the [24] ship.

Q. Can you tell us with reference to that Block No. 2, the one that broke—first, what kind of a block do you call that?

A. A snatch block.

Q. Was it a snatch block of a usual or unusual type?

A. Very usual.

Q. Was the use to which it was being put on the occasion in question when the block broke, usual or unusual use for such a snatch block?

A. Usual.

Q. Do you know what happened to the block?

A. No, sir.

Q. Do you know the reason it broke?

A. No, sir.

Q. Do you know of any cause for its breaking?

A. No, sir.

Q. Was there anything unusual in the operation that should have caused it to break in the ordinary course of events?

A. No, sir; none whatsoever.

Q. I think you have already told me that you don't know what happened to the block, is that right?

A. That is right. [25]

(Deposition of Vernon Frank Oldham.)

Q. It just disappeared, is that right?

A. Yes.

Q. If the clamp or grips, whatever you call them, that holds it together should happen to break, what would happen to the block, in all probability?

A. Well, it would be thrown in the bay.

Mr. Holland: Mr. Holland: If I might interrupt: do you mean by the accident or by someone after the accident?

Mr. Geisness: The Witness: No, by the accident.

(Whereupon, the following questions were read by Mr. Holland, and the following answers were read by Mr. Geisness.)

Q. The snatch part of the block, how is it held in place?

A. By a stell pin which is made fast with a chain to the block itself.

Q. Do those pins ever fall out so the block will fly apart?

A. No, sir, they will not. They have a safety latch on them so they can't get out.

Q. After this accident happened, did you proceed with the operation? A. Yes, sir.

Q. What did you do about the rigging then?

A. Well, we replaced it, the block that broke, and landed the cat we had, and went ahead and finished landing the cargo.

Q. Did you replace it with a block of the same kind, or a different kind?

(Deposition of Vernon Frank Oldham.)

A. Yes, sir; the same kind.

Q. You spoke, I think, of the runner going through the block, didn't you? A. Yes, sir.

Q. The runner, that would be the guy line we were talking about, wouldn't it? A. Yes, sir.

Q. I just want to ask you whether the runner broke? A. No, sir.

Q. How is the block fastened to the ship?

A. By three-quarter-inch steel strap.

Q. That is cable, too?

A. Yes, sir, steel wire strap.

Q. Was that strap broken? A. No, sir.

Q. What happened to Petterson? I forgot to ask you that. What happened to him when the accident happened?

A. Well, the guy line hit him, I think, just [27] above the knees. The snap of it threw him right straight up in the air. He came down on his head and shoulder. I found his glasses clear underneath the caterpillar.

Q. You might indicate on there where he was—I didn't ask you that,—approximately where he was when the accident happened?

A. Well, he was standing just aft of the cat.

Q. Let's put an "X" there. How is that?

Mr. Holland: Mr. Holland: You might circle that "X".

Mr. Geisness: Mr. Geisness: Yes. Circle the "X", and make it more conspicuous.

(Whereupon, the following question was read

(Deposition of Vernon Frank Oldham.)

by Mr. Holland, and the following answer was read by Mr. Geisness.)

Q. Do you happen to know why he would choose that position at the time of the accident?

A. Well, I know why, but I don't know exactly how to explain it. He was directing the operation of landing the cat, and he was standing directly aft of the cat; but when he saw he wanted to move it over another foot, he stepped over just to the corner of the cat where he could see this winch driver on the guy lines, and gave him a signal to move it over just a little bit, and then the block broke. [28].

Mr. Holland: Mr. Geisness: I think that is all.

(Whereupon, the following questions were read by Mr. Holland, and the following answers were read by Mr. Geisness.)

Q. I forgot to ask you: will you be here when this case is tried the 30th of October? I mean, do you intend to be here?

A. Well, not if I can get excused.

Q. Where do you want to be?

A. Well, I was planning on going hunting.

Q. Where? A. Pomeroy.

Q. In Eastern Washington?

A. Yes, sir; Southeastern.

Q. Is it agreeable to you that we have your testimony written up and read at the trial?

A. Yes, sir.

Q. Do you care about reading it over to sign it, or will you waive that right?

(Deposition of Vernon Frank Oldham.)

A. Well, I will sign it.

Q. You can waive it if you want to.

A. No, it is all right.

Mr. Holland: Cross-examination by Mr. Holland.

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.) [29]

Q. What time did you start to work on that day, Mr. Oldham?

A. At seven o'clock in the evening.

Q. Your gang was just to work on that particular hatch, was it? A. Yes, sir.

Q. There were about how many other men in your gang, roughly?

A. Well, let me see: there is usually twelve men. Now, that is not including the two extra winch drivers.

Q. In other words, from eleven to fourteen men, possibly, including yourself? A. Yes, sir.

Q. When you first arrived on that day, that was the first time you were aboard the ship, wasn't it, at seven p.m.?

A. I don't remember. I think we started the ship a few nights ahead of that.

Q. Oh, I mean that day. This was your first going to work on this day? A. Yes, sir.

Q. When you came aboard at seven p.m., how was the jumbo boom rigged at that time, do you recall? [30]

A. Well, the jumbo boom was all rigged. The



(Deposition of Vernon Frank Oldham.)  
sailors do the rigging on those ships usually. They of the day gang may have rigged the ship. I don't know; but the boom was rigged.

Q. How about the guy line—the guy line you have described?

A. The guy line, I am pretty sure we had to take this block—put this No. 2 block on deck to get the guy line out of the way so we could line this caterpillar up.

Q. You put this No. 2 block on the diagram—you put it in the position you mean, where it was on the diagram?

A. Yes, sir.

Q. So you could do what with the caterpillar?

A. So we could land it clear of the guy line.

Q. Before you did that with Block 2, where did the line marked "A" run as between Block 3 and Block 1? Did it run directly?

A. Directly from Block 1 to Block 3, approximately two feet inside of the rail.

Q. And the reason it was inside the rail was because the straps let the block hang out a little from the rail?

A. Yes, sir. [31]

Q. Was that one of the first things that was done by your crew when they started—was to install this?

A. I don't remember. I know we installed that before we took the cat, got the cat on the gear.

Q. Was the cat one of your first objects you worked on, or did you have some others?

A. I don't recall exactly, but I think we landed

(Deposition of Vernon Frank Oldham.)

one, or—let me see: I think one away forward on the inshore side.

Q. This accident happened around eleven-thirty, is that your recollection, that evening?

A. I couldn't say.

Q. You don't remember?

A. No, sir, I don't.

Q. You decided it was necessary to put this additional Block No. 2 in place when you commenced to work on the cat?

A. Well, I definitely—Bill Slack was the hatch tender. He directs placing of all the gear, the hatch tender does; so I guess Petterson told him where the cat was to go, and Slack went ahead and placed the blocks to get the guy line out of the way.

Q. Wasn't this rigging, as far as its placing was concerned, under the direct supervision of [32] Petterson? A. Not always.

Q. What was he, hatch foreman?

A. Yes, sir, he was hatch foreman.

Q. In this particular instance, wasn't the rigging done under his direct supervision?

A. No, sir, I don't think so.

Q. You think it was Mr. Slack?

A. I think Mr. Slack, the hatch tender, at all times has full authority in rigging our gear.

Q. Isn't it a fact that just at the time you rigged this No. 2 block in order to work on the cat, that Bill Slack, the hatch tender, wanted to run the guy line along the port rail as it had been;—in other words from Block 1 to Block 3?

(Deposition of Vernon Frank Oldham.)

A. I think there was something said about that between Petterson and Slack.

Q. Isn't it a fact that Slack wanted it to run along the rail and Petterson wanted it done the way it was eventually rigged?

A. I think that is right.

Q. So at least from that it is reasonable to assume that Petterson at least had the last word on exactly what was to be done on that occasion, isn't that right? [33]

A. Well, I think Petterson told him it would be in direct line of where they wanted to line the cat.

Q. If it was along the rail? A. Yes, sir.

Q. And therefore told him it would be best to have this Block No. 2 over along the hatch?

A. Yes, sir.

Q. I think you said Petterson was doing the signaling to the hatch tender at Winch "B"?

A. Yes, sir.

Q. When he wanted to (the) cat to come over a little further, is that right? A. Yes, sir.

Q. In your experience as a stevedore, isn't it fair to say that the strain on line "A" would be greater the further outboard or offshore the jumbo got?

A. Well, I wouldn't say. The greatest strain, I would think, would be on Block B, directly from the winch.

Q. In other words, when the jumbo is over on the far side.

(Deposition of Vernon Frank Oldham.)

Incidentally, if it is agreeable, I will write "dock" on here, Mr. Geisness. [34]

Mr. Geisness: Mr. Geisness: Go ahead.

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.)

Q. Isn't that correct, Mr. Oldham?

In other words, when the jumbo is over towards the dock side, and the guy is running from Block No. 1, at its last point to the tip of the boom, the strain there wouldn't be as great as from the tip of the boom more directly over the block?

A. Yes, sir.

Q. In other words, the closer the tip of the boom comes to above Block No. 1, the more strain?

A. The more strain—the more straight up and down, the greater the strain.

Q. And the more this boom was being moved over to the offshore side, the greater the up-and-down pull, and the greater the strain?

A. The strain would be on Block 1.

Q. In other words, these last few inches that Mr. Petterson was directing, the movement, there would be a little additional strain on line "A", wouldn't there?

A. Yes, sir; excuse me. He has got those marked Block 1 and 2, not A.

Q. I said, the greater strain on line A, not [35] block. In other words, the further offshore the tip



(Deposition of Vernon Frank Oldham.)

of the boom, the more directly on Block A, and as you told me—

A. Block 1. The same strain would be on the guy line any place.

Q. The same strain? A. Yes.

Q. How would you get any more strain on the block without any greater strain on the line?

A. Well, the more up and down you have on the block gives it more strain on this one block.

Q. Regardless of the strain on the line, or the guy, I should say?

A. Well, I don't know, now, about that.

Q. Well, in other words, when the tip of your boom is way over on the other side off the dock, then the boom, the pull on the boom is more or less horizontal, or close to it?

A. Yes, sir.

Q. And it is not as difficult to pull then as it is when directly overhead from Block 1, where you are pulling, isn't that right?

A. Yes, sir, but on this block you have your straight pull.

Q. On Block 1 you are pointing to? [36]

A. You have the direct pull, but this block is more or less just a lead block.

Q. You are pointing now to Block 2?

A. Block 2. It has the less strain of either of these two blocks—Block 1 and Block 3—because this is more or less just a lead block.

Q. When the tip of the boom is about where it is on the diagram, what would you say, that it was



(Deposition of Vernon Frank Oldham.)

fairly close to 90 degrees, the angle, or a little less than 90 degrees, perhaps?

A. It is less; less than 90 degrees.

Q. As shown in the diagram the angle on either side of the block 2 is approximately 90, isn't it?

A. Yes, sir.

Q. The fact that Mr. Petterson was hit when Block 2 broke would prove that he was standing in the bight of the line, wouldn't it, Mr. Oldham?

A. Yes, sir.

Q. In other words, for the jury, who are not familiar with maritime terms, the bight of the line means in an area—

A. Danger spot.

Q. And he was standing in that area, because otherwise he wouldn't have been hit, isn't that right? [37]

A. Yes, sir.

Q. And there was available to him other spots to stand; namely, over by the rail?

A. No, sir.

Q. Wouldn't he be able to stand over by the rail?

A. He would, but somebody had to stand in there. When you are landing a heavy piece of equipment like that, that piece has to be landed right, and you can't land it by standing and looking at it. You have got to get your hands on it and land it. Somebody has got to be there. You will have your blocks and everything to land your cat on, and it has to be landed perfect.

Q. He had been standing, though, just before he was hit, further over towards the rail?

A. Yes, sir. He was. As I said, aft of the cat,

(Deposition of Vernon Frank Oldham.)

and there were two or three men standing in there with him, stevedores.

Q. At the time of the accident?

A. Well, yes, they were still there at the time, because we couldn't figure out how anybody else kept from getting hit.

Q. When that block broke, the line snapped over and hit Petterson, and it hung up on the tractor?

A. Yes, sir.

Q. And it was because—the reason those men weren't hit was undoubtedly because they were over behind the edge of the tractor?

A. Yes, sir.

Q. What was just forward of the tractor? Was the deck clear there, no other cargo?

A. I don't remember whether we landed anything there or not.

Q. You didn't have any opportunity to inspect this block before the accident, did you?

A. No, sir.

Q. Did you have your hands on it at all in rigging?

A. No, sir, I did not.

Q. You were on your winch?

A. I was on the winches all of the time.

Q. Now, does the winch driver at the after end of the hatch handle both winches?

A. The topping lift and the purchase, both winches, yes.

Q. Were either of your winches in operation at the time of the accident?

A. No, sir; they were both off.

Q. Of course, the line would be taut on each [39]

(Deposition of Vernon Frank Oldham:)  
one, wouldn't it? A. Yes, sir.

Q. After the accident you said you continued operations and put another block at the point where the block broke? A. Yes, sir.

Q. Where did somebody obtain that block, or do you know?

A. Well, I think that was—well, I won't make a statement on that because I don't know.

Q. In respect to the Block No. 2 itself, do you have any idea, or don't you believe it was supplied by the Alaska Terminal Stevedoring Company rather than by the ship?

A. No, sir. I would have no reason to believe either way.

Q. Do you remember when Mr. Sullivan came out to talk to you a year ago on this case?

A. Yes, sir.

Q. And that he took a statement as to how the accident happened. Do you remember telling him to the best of your knowledge the block that came apart was a snatch block that was supplied by the Alaska Terminal and Stevedoring Company? Do you remember telling him that? [40]

A. No, sir. I believe I told him that it was supposed to be supplied, but as to actually knowing, I don't know.

Q. Do you remember that he prepared a statement of your version of the accident?

A. Yes, sir.

Q. Did you read it over and sign it, Mr. Oldham? A. Yes, sir, I think so.

(Deposition of Vernon Frank Oldham.)

Mr. Holland: And then I had it marked.

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.)

Q. Handing you what has been marked Respondent's Exhibit No. 1 for identification, would you take a look at that, and tell us whether or not that is the statement that you gave Mr. Sullivan and signed? A. Yes, sir; that is it.

Q. And that is your signature on the last page, isn't it? A. Yes, sir.

Mr. Holland: At this time I would like to introduce Respondent's Exhibit Number 1 in the deposition as part of this case here.

Mr. Geisness: No objection. [41]

The Court: It will be Respondent's Exhibit Number A-2.

(Respondent's Exhibit Number A-2 marked for identification and admitted in evidence.)

The Court: You may proceed.

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.)

Q. Now, Mr. Oldham, were there any ship's officers around at the time of the accident, if you know?

A. No, sir, I don't remember if there were.

Q. Generally, though, through that evening and through the course of your work there, you didn't

(Deposition of Vernon Frank Oldham.)

take any instructions, of course, from the ship's officers, or directions?      A. No, sir.

Q. Your directions all come from the hatch foreman?      A. Yes, sir.

Q. And he gets his instructions from a walking boss, or somebody in charge of the ship, as a rule?

A. Yes, sir.

Q. And the walking boss is, of course, a stevedore employee, too, isn't that right? [42]

A. Yes, sir.

Q. On this particular occasion, and also from your experience, with stevedores taking over a hatch, they know what they are supposed to do and they do their job, and there is no necessity for the ship's personnel to be around, isn't that right?

A. That is right.

Q. Had you known Petterson some time before this accident?

A. Well, I had worked for him quite a few years.

Q. You had been a member of his gang quite a few years, had you, or you had been on the same gang?

A. Well, Petterson was the stevedoring boss. He bosses for any gang that comes down there.

Q. I meant you happened to have worked under him previously?      A. Oh, yes, sir.

Q. Do you know Mr. Petterson socially at all; that is, off the job?      A. No, sir.

Q. Now, you told Mr. Geisness about this identification of blocks and gear, and you said there was



(Deposition of Vernon Frank Oldham.)

one big gear locker down there. You mean an [43] Alaskan Terminal gear locker?

A. On the dock, yes, sir.

Q. That is the terminal company or stevedoring company gear locker; that is not the ship's gear locker?

A. No, it is not the ship's gear locker, but you find a lot of ship's gear in there.

Q. Did you, yourself, find any pieces of the block after the accident? A. No, sir.

Q. Do you know if anybody else did?

A. No, sir. There was none of the block found.

Q. Would you or some of the other boys have found it?

A. Yes, sir; we looked for it, and in doing that we found his glasses underneath the cat.

Q. And of all the men there looking for it, nobody found any parts? A. No, sir.

Q. It seems reasonable to assume it was flipped overboard by the guy? A. Yes, sir.

Q. Assuming, Mr. Oldham, you have a block that is proper to support an 18-ton load such as [44] you were moving here, it is possible, isn't it, by improper use of the guy lines to put even greater pressure on that block by the guys?

A. No. The weight of your lift has nothing to do with the variation in the strain on your guys.

Q. Because your guys are merely guiding the boom? A. Just guiding the boom.

Q. You have driven winches for quite a few years, haven't you? A. Yes, sir.

(Deposition of Vernon Frank Oldham.)

Q. It is possible, isn't it, that if you take up a strain by accident on both of your winches at once in a situation like that, that you can put excessive and unnecessary strain on a block, can't you?

A. Yes, sir, very possible.

Q. Have you ever seen it happen yourself?

A. Yes, sir. I have seen lots of blocks break. At the Army docks when you are pulling 35 or 40-ton tanks or big guns, they just don't make a block heavy enough for that.

Q. You are talking about weight?

A. Yes, sir.

Q. I am talking about your port and starboard guys. [45]

A. I understand. It is very possible if you went ahead on both winches you would have a tremendous amount of strain.

Q. In layman's language you mean taking up or putting a strain on both lines "A" and "F", is that right?

A. Yes, sir.

Mr. Holland: Redirect Examination by Mr. Geisness.

(Whereupon, the following questions were read by Mr. Holland and the following answers were read by Mr. Geisness.)

Q. Who wrote that statement? Did you write it out, or did Mr. Sullivan?

A. He wrote it out.

Q. I didn't ask you what you were doing, what your job was that day?

A. Winch driver.

(Deposition of Vernon Frank Oldham.)

Q. Which winch?

A. The after winch on the boom and purchase.

Q. You were really operating two winches?

A. Yes, sir.

Q. Mr. Holland asked you some questions about the strain that would result, as I understood his question, if the port guy line and the starboard guy line were both pulled in by the winches at [46] the same time. Is that what you understood him to be talking about?

A. Yes, sir.

Q. As far as you know, was the winch driver at the forward winches, those that were attached to the guy line, was he pulling in on both the guy lines at the same time so as to throw the power of one winch against the power of the other winch?

A. No, sir. Well, I don't know. I don't know what could have happened on that end of the ship.

Q. Well, as far as you know, was he?

A. I know there would be no reason to.

Q. Would that be good practice?

A. Why, absolutely not.

Q. Would it be common or customary practice?

A. No, sir.

Q. Would it be most extraordinary?

A. It sure would.

Q. It would be a little insane?

A. It sure would.

Mr. Geisness: I guess I am getting a little leading at that point.

Mr. Holland: I think I will object to question nineteen [47] (19) on that ground.

The Court: I think that may be stricken.

Mr. Geisness: We offer this deposition in evidence. I never quite got the point of offering them in evidence, but I will.

The Court: I think you offered it and read it, and, I assume, that makes it part of the record.

Mr. Geisness: I think so. Shall I proceed?

The Court: Yes.

Mr. Geisness: Mr. Pettersen?

Mr. Holland: If the Court please, may I ask that the witnesses leave the court room at this time?

The Court: Yes. Those persons in the court room that will be called as witnesses are requested to leave the court room, but be available in the witness room which is outside in the corridor to your right as you leave, and you will be called as counsel wishes you to testify.

That will apply to all witnesses. [48]

### JOHN O. PETTERSEN,

The Libelant, called as a witness for and on behalf of Libelant, upon being first duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. Geisness): Will you state in full your name, please? Can you hear me?

A. Not very good.

Q. Can you hear me now? (Counsel raises voice.)

A. Yes.

Q. Will you state in full your name, please.

A. John O. Pettersen.

Q. S-e-n? (spelling).

A. Yes, sir.



(Testimony of John O. Pettersen.)

Q. Where do you live, Mr. Pettersen?

A. 319 Garfield.

Q. Here in Seattle? A. Yes, sir.

Q. How long have you lived in Seattle, Mr. Pettersen? A. Thirty-one (31) years now.

Q. What is your age?

A. Seventy-four (74).

Q. What has been your—what was your regular occupation up until you had this accident involved in this case? [49]

A. Well, I was working for the stevedoring companies since after the War.

Q. What did you do before that?

The Court: What war?

The Witness: The Second World War.

Q. (By Mr. Geisness): (repeating) What did you do before that?

A. Well, I was superintendent for Matson Navigation Company in Seattle here, and during War I was master of a Liberty ship.

Q. You have master's papers then?

A. Yes, sir.

Q. Since the War, since you have been working for the stevedoring company, what kind of work have you done for the stevedoring company?

A. Well, I have been foreman for them, both walking boss and hatch boss; both.

Q. For just one (1) company or more than one (1)?

A. Yes, sir; just Alaska Terminal.

Q. Alaska Terminal and Stevedoring Company?



(Testimony of John O. Pettersen.)

A. Yes, sir.

Q. As hatch boss, what place do you have jurisdiction over?

A. Jurisdiction over the gang in the hatch.

Q. In one (1) hatch at a time? [50]

A. Yes; sometimes two (2).

Q. Sometimes two (2)? A. Yes.

Q. And as walking boss, what area do you have jurisdiction over? A. With what?

Q. You said that you were a walking boss sometimes, did you? A. Yes.

Q. What does a walking boss have jurisdiction over?

A. He has got jurisdiction of the whole ship.

Q. Is he employed—Start over again.

On the Alaska Steamship Company's vessels, is the walking boss employed by the steamship company or the stevedoring company?

A. By the steamship company.

Q. Who is the hatch boss employed by?

A. By the stevedoring company.

Q. Now, on May 29, 1950, did you report for work aboard the Susitna? A. Yes, sir.

Q. About what time did you go to work that day on the Susitna? A. Seven (7:00) p.m.

Q. Seven (7:00) p.m.? [51] A. Yes.

Q. You might tell us what you started out to do. What work did you do between the time you went to work and the time you were injured?

By that I mean, what kind of cargo were you loading and where?

(Testimony of John O. Pattersen.)

A. We were loading general cargo from seven (7:00) up until about eight-fifteen (8:15).

Q. Yes?

A. And then we closed the hatch and we got all the falls for the gear, or the heavy lift, ready to work heavy lift.

Q. You have to change the gear for heavy lift?

A. We have to change our falls; yes.

The Court: Your what?

The Witness: Wire falls. In other words, they call them runners too.

Q. (By Mr. Geisness): Those are just wire ropes that come off the winch?

A. Yes. Well, of course—

Q. And then after did you change these falls so that you could handle the heavy lift?

A. Yes, sir.

Q. After that was done what cargo did you work on?

A. We took in at first the big, long scraper, about forty-five (45) feet long. [52]

Q. Where did you put it?

A. On the forward end on top of the deck on the port side.

Q. And after you landed the scraper what did you do?

A. We took in a cat, a caterpillar. A "cat" we call them. On the starboard side.

Q. On the starboard side? A. Yes, sir.

Q. And then what did you do?

A. We took in another cat and I wanted to put

(Testimony of John O. Pettersen.)

it on the starboard side, but the walking boss told me he wanted it over on the other side and I kind of protested because that deck was so very secure there but I had orders to put it there anyway.

Q. So that you did? A. Yes, sir.

Q. How much did that caterpillar weigh; do you know? A. Twenty-five (25) tons.

Q. Did you have to change the port guy in order to land that caterpillar?

A. We had to change the guy to land the "cat."

Mr. Geisness: I would like to show you Libelant's Exhibit 1.

I wonder if I could show him my copy?

The Court: You may; or this (indicating).

Mr. Geisness: I wonder if I could approach the witness? [53]

The Court: Yes. You may use this.

(Document handed to Counsel by Court.)

Mr. Geisness: Fine.

The Court: I notice it is shortly after eleven (11:00). The Court will take a recess of approximately fifteen (15) minutes.

(Whereupon, at 11:15 O'clock, a.m., a recess was had until 11:20 O'clock, a.m., October 31, 1951, at which time, Counsel heretofore noted being present, the following proceedings were had, to-wit:)

The Court: You may proceed, Mr. Geisness.

Q. (By Mr. Geisness): I am directing your at-

(Testimony of John O. Pettersen.)

tention now, Mr. Pettersen, to Libelant's Exhibit 1, this drawing.

Have you seen this before?

A. Not this one; no.

Q. You saw the copy, I think. A. Yes.

Q. Well, let's go over a little bit to be sure we understand each other.

The upper part of the sheet looks like the forward end of the ship; is that right? A. Yes.

Q. And the dock then is on the starboard side?

A. Yes, sir.

Q. So the ship was starboard side to the dock?

A. Yes, sir.

Q. And did you pick up that tractor from the dock to lay it on the deck? A. Yes, sir.

The Court: You may come up here, Mr. Holland, if you wish.

Mr. Holland: I was going to suggest that perhaps the Court would like to have your other copy to view.

Mr. Geisness: I wonder if that wouldn't be a good idea.

(Document handed to Court by Mr. Geisness.)

Q. (By Mr. Geisness): Now there is a "boom" marked here. That is the boom you were lifting the tractor with; is that right? A. Yes, sir.

Q. And from the tip of the boom we have a line marked "A"? A. That is a guy.

Q. And that is the guy—



(Testimony of John O. Pettersen.)

A. (Interposing) The guy for the boom for the port side.

Q. The guy for the boom for the port side?

A. Yes.

Q. And that, apparently, on this drawing runs from the [55] tip of the boom and through some blocks, or shives, from that guy? A. Yes.

Q. And it goes through block number one (1); is that right?

A. You see this one here, this block here? (Indicating) That is fast down here.

Q. Block one (1)? A. Yes.

Q. What was that fast to?

A. A big shackle there or an iron stanchion.

Q. What kind of a block was number one (1)?

A. Something similar to the other blocks we used; not quite as large as that one there. (Indicating Respondent's Exhibit Number A-1).

Q. Did you look at that block there?

A. That looks like the blocks we are using.

Mr. Holland: Respondent's Exhibit A-1 for illustrative purposes, we are talking about, Mr. Reporter.

The Witness: Pardon?

Mr. Holland: That is all right.

The Witness: That one there is similar to what we were using.

Q. (By Mr. Geisness): Have you been able to take a good look at the one lying on the floor? [56]

A. Yes, I know those blocks.



(Testimony of John O. Pettersen.)

Q. And is that about the same type of block, except for size?

A. I wouldn't say it was exactly the same. Some of them, the strap goes on the outside and over.

The Court: What does?

The Witness: Over on the block. Instead of going in that way, it goes right straight over, with a kind of a peg on the block to hold it, and we have to twist it around, and over, because this peg is this shape (indicating).

Q. (By Mr. Geisness): What was that peg used for?

A. To protect it so that it doesn't come out.

Q. To lock it closed? A. Yes, sir.

Q. Now, is that peg—

A. I don't know whether, I couldn't say exactly, whether that is the kind, or this one.

We were working at night and we took whatever was lying around which, naturally, was there for the ship's use.

Q. Let me ask you this:

Is the snatch block a block that opens so that you can put the line over the wheel in the block?

A. Yes, sir.

Q. And do they have devices to hold them closed while they [57] are in use? A. Yes, sir.

Q. Do they open accidentally then once they are closed? A. I can't see it.

Q. You can't see it, you say?

A. I can't see how it comes off after that.

Q. You can't see how it could, you say?

(Testimony of John O. Petterson.)

A. No, I don't.

Q. And in your experience as a ship's officer, and as a stevedoring foreman, have you ever heard of one of these snatch blocks coming open after they were closed and are in use? A. No, sir.

Q. All right. Now, turn again to the drawing: We have got this line "A", port guy—

A. (Interposing) Yes.

Q. (Continuing) —running down to block one (1). That is a snatch block too?

A. Yes. This pendent is fast there.

Q. What do you mean by a pendent?

A. It is a wire pendent between the two (2) blocks, a piece of wire spliced in. One (1) up here and one (1) down here. Those blocks (indicating).

Q. You are referring now to those blocks that are in between the tip of the boom and block one (1)? A. Yes, sir. [58]

Q. That shive? A. Yes.

Mr. Nolland: For the record, may we state that on the diagram it is the upper end of the thing marked "boom"? That is the tip we have been referring to?

Mr. Geisness: Yes.

Q. (By Mr. Geisness): Now go on down.

A. The fall that comes from the winch comes around into the blocks down to a block here (indicating).

Q. That is block one (1) you are referring to?

A. Yes.

(Testimony of John O. Pettersen.)

Mr. Holland: You referred to "the fall." You mean——

The Witness: The runner itself.

Mr. Holland: It can be called the port guy?

The Witness: Yes.

The Court: The runner, is that the line?

The Witness: That is the line.

Mr. Holland: Apparently, they call it a runner, or a fall, or a port guy.

Q. (By Mr. Geisness): Now then, from block number one (1) to the ship's rail, where does this runner, or port guy, go to?

A. It goes down—— [59]

Q. Where does the port guy go to?

A. Down to here (indicating); this block number two (2).

Q. And where is it located?

A. It is located at the hatch combing in what we call——

The Court: At the hatch what?

The Witness: Hatch combing.

The Court: Hatch combing?

The Witness: Yes.

Q. (By Mr. Geisness): How is it secured there?

A. Well, there is an iron strap welded in here, what the block is fast to.

Q. An iron or steel strap?

A. It is a pad eye.

The Court: A what?

The Witness: Pad eye.

Q. (By Mr. Geisness): Pad eye?

(Testimony of John O. Petterson.)

A. Yes. It is a piece of iron. It comes like this, down this way (indicating), and this is welded on to the hatch combing.

The Court: That is part of the equipment of the ship?

The Witness: Yes.

The Court: It is one of the fastenings?

The Witness: Yes, sir. [60]

Q. (By Mr. Geisness): It is like a ring; something you can hook on to?

A. It is similar to that.

Q. Is that square?

A. It is squared and welded in down there.

Q. How do you fasten that snatch block number two (2) to that pad eye?

A. That was shackled in to that.

Q. That was shackled in to that?

A. Yes. There is a wire strap to lead up over to that deck load.

The Court: One end of the shackle fastens into the wire strap on the combing and the other end of the shackle fastens in to the eye of the block; is that it?

The Witness: Yes, sir.

Q. (By Mr. Geisness): Do I understand correctly that this snatch block number two (2) was connected to the pad eye upon the deck by a wire strap? A. Yes.

Q. And the snatch block was secured to the wire strap? A. Yes.

Q. Is that right? A. Yes.



(Testimony of John O. Pettersen.)

Q. How long was that wire strap; do you remember?

A. Well, I imagine it was probably between eighteen (18) [61] inches and two (2) feet. I couldn't say exactly.

Q. Do you use a double or a single—

A. (Interposing). Double.

Q. (Continuing) —strap?

A. Double. The strap itself is about four feet long, but it goes through the pad eye and secured to the block up there (indicating).

Q. To that ring at the far end of the block?

A. To that ring in the block; yes.

Q. Now, from block number two (2), where did the guy, or runner, go?

A. Well, to over here (indicating). Along the hatch and up to the block up on the saddle of the hatch here.

Q. All right. Now let's—

A. This is up here (indicating).

Q. Let's mark that.

A. Yes. This should be number three (3) up here (indicating).

Mr. Geisness: Do you mind if I mark that in there?

Mr. Holland: If we could use a different color, possibly red.

Mr. Geisness: Do you have red?

Mr. Holland: I do not. Does the Clerk?

Mr. Geisness: That would be very good if we had one to show what this witness is putting on.



(Testimony of John O. Pettersen.)

(Red pencil handed to witness) [62].

Q. (By Mr. Geisness): Now, you put on here where you want number three (3) on it.

A. Right about here (indicating).

Q. Right about here. A. Yes.

Mr. Geisness: We will call that—we will call that three (3); is that right?

Mr. Holland: Red three (3).

The Witness: This is what we call the deck house over here, you see (indicating)?

Q. (By Mr. Geisness): This runner that runs up to—

A. To the block here, yes, sir.

The Court: That runner runs from two (2) to three (3)?

The Witness: Yes.

The Court: Underneath the boom?

The Witness: Right along the hatch.

Q. (By Mr. Geisness): Well, it would be under the boom.

A. Oh, yes, absolutely.

Q. Now, from three (3) where would this runner go?

A. Then it goes from here (indicating)—this is supposed to be the third block for this winch. This winch would be farther out. [63]

Mr. Holland: Mark the winch farther out.

A. (Continuing) That leads down to the drum on the winch there (indicating).

(Testimony of John O. Pettersen.)

**Q.** (By Mr. Geisness): Is that about right? Do you agree that is all right?

**The Court:** The line then goes from three (3) over to four (4); is that correct?

**Mr. Geisness:** I will mark it red "B", because we have marked the winch in its old, former position as "B".

"B" in the circle was the winch on the original drawing and he says that winch should be farther to the left.

**The Witness:** That winch is even with the hatch combing.

**Mr. Holland:** In other words, block number four (4) is now eliminated, according to this witness; is that correct?

**Mr. Geisness:** Yes. And three (3) is moved over.

**The Witness:** You see, the winch is standing at a part of an angle so that the lead—

**Mr. Geisness:** The lead is even on the drum.

**The Witness:** You see, this here should be this way (indicating).

**Mr. Geisness:** That is close enough to show.

**The Witness:** As long as you understand it is that way. Of course, this is only put down there to show the winches where they were. [64]

**The Court:** Is this going on the record?

**Mr. Geisness:** Yes, but I don't think it is material to an understanding of the matter.

**Q.** (By Mr. Geisness): Now, who rigged the block that you have just mentioned?

(Testimony of John O. Pettersen.)

A. I don't know. The hatch tender around there would rig it around this way.

Mr. Holland: Meaning the way you have drawn it, Mr. Pettersen?

The Witness: Yes, sir.

The Court: Just a moment, so that the Court has a clear understanding. The guy line that fastens on to a winch which would be "B", that goes on through the block at three (3), back to the block at two (2), down to one (1) on the stanchion, or the rail, on the ship's side, and then it goes up to the tip of the boom.

Then, does that same line come on down across to the port side?

The Witness: No, sir. It comes—those two (2) blocks up here, sir, and the line comes up to the block like this (indicating). What we call the wire is fast to the block up here.

The Court: The block on the boom?

The Witness: Yes. And then it comes down to the block, then that pendent, and then up again down into that other block over here down on the stanchion.

The Court: In other words, the guy line is fastened [65] to two (2) of them and fastened to the tip of the boom?

The Witness: Yes, sir.

The Court: One goes down and fastens on the port side and one goes down and fastens on the star-board side?

The Witness: Yes, sir.

(Testimony of John O. Pettersen.)

The Court: And then down to the various blocks?

The Witness: Yes, sir.

Q. (By Mr. Geisness): Now, in rigging this port guy, marked "A", did you have some object in mind in rigging it the way that you did?

A. We had to do it to get these things over to that side.

Q. You mean what over? A. The "cat".

Q. The "cat"? A. Yes.

Q. And to the side, you mean to the off-shore, port, side? A. Yes, sir.

Q. How far over to that off-shore, port, side were you proposing to place the "cat"?

A. I was trying to place it on the deck load just as close as I could because the deck load was piling and there was a big hole here.

The Court: Where?

The Witness: A big hole in the piling on the deck and I had to try to keep the cat away from there so that it wouldn't tip down into that hole so that I had to place it forward as far as I could.

Q. (By Mr. Geisness): You had to place it forward as far as you could? A. Yes.

Q. How about toward the rail? Were you bringing it close to the rail?

A. Well, I would say half way, in the middle, between the hatch combing and the rail.

Mr. Holland: May I interject, for convenience, Counsel? —

Mr. Geisness: Surely.



(Testimony of John O. Pettersen.)

Mr. Holland: In other words, you were placing it about half way between the hatch combing and the rail, Mr. Pettersen?

The Witness: Yes, sir.

Mr. Holland: And then, as it is drawn in the diagram you have been looking at, it is too far over towards the rail?

The Witness: Absolutely.

Mr. Holland: Could we have the witness draw it in red pencil where he recalls it?

Q. (By Mr. Geisness): Can you do that?

A. Of course, the other one comes up to here, that other piece, that scraper (indicating).

Q. Put an "S" in there now.

A. (Witness indicates with red pencil on diagram.) [67]

Mr. Holland: This is all in red pencil, for the record?

Mr. Geisness: Yes.

Mr. Holland: That is the scraper.

A. (Continuing): And then I couldn't get that far enough forward there. I had to land it about over here. It comes in about here. This is the "cat" (indicating).

Mr. Geisness: That is "T".

Mr. Holland: "C" he has marked.

Mr. Geisness: "T" in red, the same as the other, only in red.

Mr. Holland: All right.

A. (Continuing): That is the way it landed, about half way between the hatch combing and the



(Testimony of John O. Pettersen.)

rail. Of course, we have got less room here. That "cat" is about, I think it is about, ten (10) feet wide, I think, if I am not mistaken.

Q. (By Mr. Geisness): Do you know where that snatch block at two (2) came from?

A. No, I don't. I don't know.

Q. Do you know whether it was brought—was it on the ship at the time you rigged it?

A. All the rigging we used was on the ship when we started.

Q. Do you remember where it was on the ship?

A. It lay alongside the hatch, as I recollect, right on the starboard side.

Q. Is that the kind of block commonly used for that type of operation? A. Yes, sir.

Q. And for moving objects of that weight?

A. Yes. A block like that we can depend upon, the same as the other gear, is tested for thirty (30) tons, the gear is, and those blocks are put out so that they are equivalent to the same weight as the other ones are.

Q. Where were you standing at the time you were hurt?

A. When we were taking the "cat" in I was over about here (indicating).

The Court: I think he should identify that.

Q. (By Mr. Geisness): Mark it some way, will you?

A. I was standing about here. Over here. (indicating).

Mr. Holland: Would you put a circle around that figure you made, Mr. Pettersen?

(Testimony of John O. Pettersen.)

The Witness: Yes.

Q. (By Mr. Geisness): You actually put a "1" with a circle around it, in red; is that right?

A. Yes.

Q. Is that at the time you were hurt? [69]

A. No. No.

Q. I am asking where you were standing at the time you were hurt.

A. When we got it over here far enough, I gave orders to the hatch tender, or winch driver—

Q. Just mark where you were.

Mr. Holland: You might put a "P" in a circle.

The Court: You are making a circle where the witness was—

The Witness: Where I was standing.

The Court: Before—

The Witness: When I got hurt.

The Court: When you got hurt?

The Witness: Yes, sir.

The Court: There are two (2) circles on there?

Mr. Holland: One circle has a "1" showing where he was standing prior, and a red "P" where he was standing when he got hurt.

Is that right?

The Witness: Yes.

Q. (By Mr. Geisness): That is after of the tractor, the caterpillar?

A. Yes, sir. I gave orders where I wanted it landed because I had to keep away from over here (indicating).

Q. When you say "over here"; what do you mean? [70]

(Testimony of John O. Pettersen.)

A. That was a deck load of piling.

Q. That was to port of where you were standing?

A. Yes, sir, and some of the piling went back here (indicating), the long ones, and there were short ones in here (indicating).

Q. What kind of orders were you giving at the time the accident happened?

A. I told them to come back when I had it over far enough.

The Court: I can't hear.

The Witness: I told them to slack it down easy.

Q. (By Mr. Geisness): What would you slack it down with?

A. With the ship's gear, the purchase.

Q. That is with the winch at the after side of the hatch?

A. Yes.

Q. Marked "purchase" on this drawing; it is marked already?

A. Yes, you have it already.

Q. How far off the deck was the caterpillar at the time you gave that order?

A. He was touching; he was practically landed.

Q. And was it over the place—was the tractor over the place—where you wanted it landed?

A. Yes, sir.

Q. Do you know of any cause for that block breaking? [71]

A. I beg your pardon?

Q. Do you know of any cause for that block breaking?

(Testimony of John O. Petterson.)

A. None whatsoever, because when we stopped, it was landed. That is the last I remember.

Q. You gave the order to land it?

A. Yes, sir.

Q. And that is the last you know?

A. Is this yours (referring to red pencil)?

Q. No, it is the Court's.

(Pencil handed to Court by Witness.)

Q. (Continuing): You mentioned having Captain's papers. Have you also sailed as mate?

A. Yes, sir.

Q. Which mate on the ship supervises operations of this kind when a mate does supervise operations?

A. Well, different companies got different rules. When I was sailing the Matson ships we had full charge, the mate had full charge, of all the loading and discharging.

Q. When you say "mate", you mean first mate?

A. First mate, yes, sir.

Q. How many years did you sail as first mate?

A. Well, I sailed with the Matson Navigation Company for twenty-six (26) years off and on; sometimes I was ashore and sometimes I was on the ships.

Q. Have you rigged operations substantially like this from [72] time to time over the years?

A. Yes.

Q. Both as first mate and as longshore foreman?

A. Yes, sir.

Q. Was there anything out of the ordinary about the way you rigged this job?



(Testimony of John O. Pettersen.)

A. None whatsoever. We rigged it that way several times on the ships down there.

Q. You said that you had just given the signal to lower the caterpillar to its place of rest.

A. Yes, sir.

Q. At the time you stopped. A. Yes, sir.

Q. And ceased consciousness. When did you next know what was going on? When did you recover consciousness?

A. I don't remember anything until they took me to the hospital.

Q. The next thing you know you were in the hospital; is that it? A. Yes.

Q. I want to ask you this:

Do you have any means of knowing whether this block was the property of the ship, or the property of the stevedoring company?

A. I couldn't say. [73]

Q. Is it the kind of block that is commonly carried on ships in the Alaska trade?

A. The Alaska Steamship has their own gear for heavy gear.

Q. Is that the kind of gear you mean?

A. It was the kind of gear they have, yes, sir.

Q. On shipboard? A. On shipboard.

Q. And does the stevedoring company have similar gear?

A. They all have the same practically; yes, sir, the stevedoring company and the ships.

Q. What determines—when the ship is in Seattle what determines—whether you use the stevedoring company's gear or the ship's gear?



(Testimony of John O. Petterson.)

A. We never use the stevedoring gear except we are short of something. That is the only time we use it. Otherwise we don't.

Q. Otherwise you use the ship's gear?

A. Otherwise we use the ship's gear; yes, sir.

Q. What was the condition of your health just before this accident happened?

A. Absolutely O. K.

Q. How steadily had you been working?

A. Well, I was working practically every day up to the time I got hurt.

Q. About how much did you earn during the year immediately [74] before you were hurt?

A. Well, during the salmon season we used to earn up to two hundred fifty dollars (\$250.00) a week.

Q. But by the year?

A. On an average of the year I should say between six (6) and seven thousand dollars (\$7,000.00). That was our regular earnings for the year.

The Court: For what period of time?

The Witness: Pardon?

The Court: You say average earnings. For what period of time? For how many years?

The Witness: Well, since I worked. I started to work there, I think it was, in 1947 when I started down there, because I came home in the late part of 1946 or '7.

Q. (By Mr. Geismen): Did your earnings remain the same year after year?

A. No. When I first started it was about five

(Testimony of John O. Pettersen.)

thousand - (\$5,000.00) when I first started down there, because I was a new man and you kind of gradually work up all the time.

Q. Since the accident happened have you gone back to work as a longshore foreman?

A. No, sir.

Q. Why not?

A. Because I couldn't. I tried to go out as mate on the ship. [75]

Q. What ship was that?

A. The General Fairfield, I think, was the name of it; a Liberty ship.

Q. When was that?

A. About a month after I be out of the hospital.

Q. We don't know that.

A. Well, I came out of the hospital, and I was there for six (6) weeks, and I came out, I think it was, the latter part of July.

Q. Of what year? That would be —

A. 1950.

Q. 1950? A. Yea.

Q. And about how long after you left the hospital did you go out as mate?

A. I would say about two (2) months, I would think.

Q. How long were you out as mate?

A. I tried to work and I was there about a week and had to quit.

Q. What was the trouble?

A. My arm and my leg gave away.

Q. Which leg is it?

(Testimony of John O. Pettersen.)

A. This right leg here.

Q. How did it trouble you? You say it gave way. What trouble did you have?

A. Well, I worked for a while, and then walk around and [76] then I got to sit down. My ankles kind of get rubbery and I can't move the leg.

Q. Did it hurt or was it weak?

A. I guess it is weakness, I suppose, from the wound here, as near as I can see.

Q. Does your right leg ever hurt you?

A. Did what, sir?

Q. Does your injured leg ever hurt you?

A. Yes; it hurts me quite often.

Q. On any particular occasion?

A. Right on the side here.

Q. No. Under what circumstances?

A. Well, I don't know what it is, whether it is from walking, or getting too much weight on it, I couldn't say, because in the morning when I get up the leg is normal and I walk on it for a little while and it swell right up.

Q. Does it get discolored at all?

A. Yes.

Q. What color? A. Red.

Q. What part of your leg is it now?

A. Right down on the big part here.

Below your knee?

Oh, yes; below the knee.

Q. On the calf of your leg? [77]

A. Yes.

Q. You mentioned your right arm and shoulder.

What trouble do you have with the right arm and shoulder?

(Testimony of John O. Pettersen.)

A. Well, I guess it has been that way ever since I got throwed around and came down on my neck and head. It has been hurting ever since, right through here (indicating).

Q. You are indicating your right side too?

A. Yes.

Q. Does that hurt constantly or does it hurt intermittently?

A. Well, sometimes it hurts pretty bad. Sometimes I can't lift the arm up at all. And then again, sometimes it goes away a little. But, the shoulder is always sore.

Q. Now, you mentioned working for—did you say about—a week as mate? A. Yes, sir.

Q. What other work, if any, have you done since you were injured? A. None.

Q. None at all? A. No, sir.

Q. Do you know of any that you can do?

A. Well, I don't know. I haven't been any more, because when I go out, if I go out in the yard and try to cut the grass, or anything, I have got to quit.

Q. As a longshore foreman you have to get around on you feet a good deal?

A. Yes, sir; in the holds.

Q. You have to use arms and hands?

A. Yes.

Q. Is that for climbing? A. Yes.

Q. For any other purpose? A. No.

Q. Just climbing?

A. Climbing up and down. You have got to go around the deck and watch everything.



(Testimony of John O. Pettersen.)

Q. Has your condition changed in the last—well, six (6) or seven (7) months?

A. My physical condition?

Q. Yes. A. No, I don't think it has.

Q. Have you been receiving any treatment?

A. Not since I left the hospital, I haven't.

Mr. Geisness: I believe that is all.

Cross Examination

Q. (By Mr. Holland): Mr. Pettersen, on the evening you reported to the ship, at about seven (7:00) p.m., about how many men were there, in your gang at that hatch? [79]

A. There is twelve (12) men in a gang.

Q. I see. And that is how many winch drivers in that?

A. Two (2) winch drivers. Pardon me for saying: When we have a lift, we have to have an extra winch driver and he is called down whenever we need him.

Q. And what are the other men classed as, or called?

A. You have hatch tender. He was ordered from the hall at four (4:00) o'clock in the afternoon.

Q. This extra man, you mean? A. Yes.

Q. Tell us about the other men in the gang. What do you call them?

A. They are ordinary longshoremen.

Q. And the winch drivers alternate as hatch tenders; is that the way it works?

A. Yes, sir.



(Testimony of John O. Pettersen.)

Q. Now, when you first came aboard the vessel, was the jumbo boom rigged in position?

A. The boom was up and rigged.

Q. In other words, normally that boom is lying flat on the deck; is that right?

A. We had to take some other general cargo in before we used the heavy lift.

Q. Did you do that while the boom was still up?

A. Oh, yes; the boom was still up. [80]

Q. Is that something the seamen on the vessel do for you before you start work; they get the boom up in position?

A. Well, according to ship's rules and everything, the sailors is supposed to rig the gear, but on the Alaska Steam they don't like to call the stevedore down at night so that—I mean the sailors they don't like to call the sailors out at night to do the work, so they get us to do it.

We do it as a courtesy, but we are not supposed to do it.

Q. How about this night? At seven (7:00) o'clock at night the jumbo boom was up and ready?

A. Yes. The boom was up for us to put the purchase at the top.

Q. So that the boom was up and you had to put it where you wanted it?

A. Yes, sir.

Q. Normally, when the ship comes in it is down on the deck, is it?

A. No. It is always up.

Q. It is always up but fastened against the mast?

A. Yes, sir.

(Testimony of John O. Pettersen.)

Q. So that when you came aboard it was out from the mast?

A. It was right out and in what they call the saddle.

Q. Now, you didn't do anything with the boom until you [81] handled the general cargo?

A. We didn't do anything with the boom until we were through with the general cargo.

Q. Then when you finished the general cargo, what orders did you give as to what you would do with the jumbo boom?

A. We got orders to close the hatch and get the heavy boom ready for taking heavy lift.

Q. When you say you got orders, from whom did you get those orders?

A. From the walking boss.

Q. You yourself were in charge of the one hatch? A. Yes, sir.

Q. And the walking boss was in charge of all the hatches? A. Yes, sir.

The Court: You say you got orders to close the hatch and rig the boom?

The Witness: Yes, sir.

Q. (By Mr. Holland): Do you recall any ship's officers around that evening between seven (7:00) and the time of your injury?

A. Well, they had a relief officer on board there.

Q. That is a night mate?

A. A night mate; yes.

Q. The night mate—so far as the work going on at your hatch, the night mate wouldn't have

(Testimony of John O. Pettersen.)

anything to do except as to the [82] safety of the ship? A. That is all; yes, sir.

Q. And so far as where the gear is to be placed, where the jumbo boom is to be moved to, or how you run your guys, that is your job at that hatch, isn't it? A. That is right.

Q. And you tell your men how you want it fixed up? A. Yes, sir.

Q. And you get your orders as to where to put the different cargo from the walking boss?

A. Yes.

Q. He tells you where the cargo is to go?

A. Yes, sir.

Q. And you figure out for yourself how to do it; is that right? A. That is right.

Q. In other words, as to this hatch where you were working, you and the men under you, you had complete charge of everything going on; didn't you?

A. Yes.

The Court: Do I understand:

The walking boss tells you where it is to go but you and your gang determine how it is to get there?

The Witness: Yes. [83]

Q. (By Mr. Holland): How long—I think you told us, Mr. Pettersen—that with the jumbo boom and gear you put one "cat" and one scraper aboard?

A. Yes.

Q. And then the third object was the "cat" involved when you were injured? A. Yes.

Q. How long a time was that that you were working the jumbo boom before you were injured?

(Testimony of John O. Pettersen.)

A. Well—

Q. In other words, how long did it take to put the scraper and the first "cat" on?

A. After we got the gear and everything rigged it would only take fifteen (15) or twenty (20) minutes to take the lifts in.

Q. I see. That is for those two lifts, fifteen (15) or twenty (20) minutes? A. Yes.

The Court: On each lift?

The Witness: On each lift; yes, sir.

Q. (By Mr. Holland): On each lift?

A. Yes.

Q. Could you tell us about how long a period of time between the time you first started doing anything with the jumbo gear and [84] the time you were injured?

A. Well, we started the jumbo, I think it was, about eighty-thirty (8:30).

Q. About eight-thirty (8:30)?

A. Yes, and it took us about one (1) hour and a half to rig the boom.

Q. That is, to get it in position where you wanted to have it so that you could bring on your heavy loads? A. Yes.

Q. And during that hour and a half, other than as to what cargo was to be put where, your walking boss didn't have anything to do with how you were to rig it up, did he? A. Oh, no.

Q. That was your problem? A. Yes.

The Court: We will take a recess now. Court will recess until two (2:00) O'clock.



(Testimony of John O. Pettersen.)

(Whereupon, at 12:05 O'clock, p.m., a recess was had until 2:00 O'clock, p.m., October 31, 1951, at which time, Counsel heretofore noted being present, the following proceedings were had to-wit):

The Court: You may proceed.

Mr. Holland: May I have the last question and answer, Mr. Reporter?

(Whereupon, material appearing on lines 10 through 15, page 85, read by Reporter.)

Q. (By Mr. Holland): Mr. Pettersen, you told us that this block was loose and somewhere on the deck before you used it?

A. I don't know whether it was used before or not. It was there.

Q. You said it was out loose?

A. Loose on the deck; yes.

Q. Do you know which man of your gang actually was the one that secured that block?

A. No, I don't, because everybody was working around to get everything rigged.

Q. And you had no particular occasion to inspect the block at all before the accident, did you?

A. No, sir.

Q. You told us, Mr. Pettersen, that when you were working for Matson's as a mate that the first mate had full charge of the loading of those vessels, at least, of Matson's?

A. Yes. Yes.

Q. Now, from your experience with Matson, at least, didn't they also use stevedores who came aboard to do the work?



(Testimony of John O. Pettersen.)

A. Yes, but they worked under their orders.

Q. Under the mate's orders? A. Yes.

Q. Hasn't it been your experience, Mr. Pettersen, that, [86] normally, the work is done by stevedoring contractors and the mates only have to watch out for the safety of the ship and to tell them what cargo is to come in and how?

A. They do, but the Matson done their own stevedoring.

Q. Yes, but normally on other lines? Have you been mate on other lines than Matson?

A. No, I have been sailing with Matson almost all the time; until I came to Seattle rather.

Q. Most of your experience as a mate has been with Matson's then? A. Yes.

Q. Now, you told us there was a night mate aboard the Susitna?

A. There was a night mate there.

Q. There was a night mate there, yes. Do you know what particular duties he had, if any, aboard the vessel? A. No, sir.

Q. Have you observed, in your experience, Mr. Pettersen, the situation that develops when the winch driver accidentally takes up on both the starboard and port guy at the same time?

Have you seen that happen?

A. We done that down there all the time; they was supposed to slack on one guy and the other the other way, usually.

Q. You slack off one and carry over with the other, and vice versa? [87] A. Yes, sir.

(Testimony of John O. Pettersen.)

Q. Have you seen it happen when a winch driver would take up on both at the same time to a point where the two (2) falls are pulling against each other? A. I haven't seen that.

Q. Isn't it a fact that that is referred to by name as "two (2) -blocking"? Have you heard that expression?

A. It may be, but I haven't seen it.

Q. Have you heard that expression in your experience; "two-blocking"?

A. In which way do you mean?

Q. Have you ever heard the term "two-blocking"? A. "Two-blocking"?

Q. Yes.

A. Yes; I understand you now.

Q. And that is what I described; when the two (2) falls pull against each other?

A. I was saying when you handle freight; that is, ordinary freight, with the winches; but, I never seen it.

Q. On the jumbo boom? A. No; never.

Q. And you never—you say you never—scratch that.

These were what type winches; electric or steam?

A. Electric winches.

Q. Electric winches? [88]

A. Yes.

Q. And the winch driver at the forward end of the hatch operated the port and starboard guys, didn't he? A. Yes.

Q. And he operated one with one hand and

(Testimony of John O. Pettersen.)

the other with the other? He stands between them and operates the two (2); and what is it, a lever that goes one way or the other?

A. Yes, one is for going down and one for coming up.

Q. There is a lever you can push down or pull up? A. Yes.

Q. Do you have any idea whether or not, before the accident, the winch driver at the forward end of the hatch may have pushed both levers down, or up, together? Did you observe that at all?

A. No, I never did; no.

Q. Assume from your experience, Mr. Pettersen, as a mate and a stevedore, that the winch driver at the forward end of the hatch had pushed both levers down, what would that do? Take up?

A. That is coming back.

Q. That lets it out?

A. That lets it out; yes.

Q. Now, assuming in this case he pulled up the two (2) levers together at the same time to the point where the two (2) guys were pulling against each other, would that have placed any more strain on the various blocks in the system? [89]

A. I suppose, if it did it would, but then I don't know whether he did or not.

Q. You just don't know? A. No.

Q. But I say if he had done that, it would place a greater strain, wouldn't it?

A. Oh, naturally it would; sure.

(Testimony of John O. Pettersen.)

Mr. Holland: May I see Libelant's Exhibit A-1? Is that still attached to the deposition?

(Document handed to Counsel by Clerk.)

Mr. Holland: This yellow diagram is Libelant's Exhibit Number 1.

The Court: Yes.

Q. (By Mr. Holland): Were there any other men standing near you, Mr. Pettersen, when you were hit?

A. Any what, sir?

Q. Any other men standing near you when you were injured?

A. Yes, I think there was two (2) or three (3) around there just about where I was.

Q. Do you have any idea as to why they were not hit by the guy?

A. No, I don't. They were there just when we were landing to help out. They were around that way. In fact, everybody was. [90]

Q. There were some men right close to you when you were hit, as far as you remember?

A. Yes.

Q. And you haven't any idea why they were not also hit by the guy, do you?

A. No, I don't think so.

Q. You don't know why they weren't?

A. Well, it is a miracle that they wasn't.

Q. On the diagram that is Libelant's Exhibit Number 1, you marked the "cat" where you thought it was and the scraper?

A. Yes.

Q. There was some space between the cat and the scraper?

A. Yes.



(Testimony of John O. Pettersen.)

Q. What was the floor in that space? Piling?

A. Piling. I think one-by-eights (1 x 8) on top. Kind of a flimsy thing.

Q. And were you giving the signals, or was somebody else? A. To come back?

Q. Whatever signals were given.

A. I stood there to watch it and just motioned how to come back. That is all I did.

Q. And then did somebody else give a signal?

A. I suppose the hatch tender did. He was around there. Yes.

Q. And is there any particular reason why you couldn't [91] have been standing in front of the tractor, or forward of the cab?

A. Not to place it where we wanted it. There was only one place we could stand it because there was about eight (8) feet between us and the guy.

Q. I see, but how about forward of the "cat", was there any place where this group of one-by-eights (1 x 8) were laying?

A. Some fellows were there. I don't know.

Q. The place you marked on the diagram where you were standing is in the bight of the line, right there, isn't it? A. Yes.

Q. And you testified about your average pay beginning in 1947 at around five thousand (\$5,000.00), and being now around six (6) or seven thousand (\$7,000.00) a year? A. Yes.

Q. Was that your take home pay, or was that before deductions?



(Testimony of John O. Pettersen.)

Is that before the tax was taken out, or is that what you took home?

A. Well, the tax was taken off that.

Q. That was your take home pay?

A. Well, whatever was left. Taxes took off. Sometimes it would vary a little more than other times.

Q. In other words, the figures you gave us was before the taxes were taken out; is that what you mean? A. Yes. [92]

Q. What do you think your pay was after they took the taxes out during the years that you made six (6) or seven thousand (\$7,000.00) total?

A. Well, anytime that we were over \$220.00 or \$180.00, or something like that, a week, sometimes they took twenty dollars (\$20.00) or twenty-three (\$23.00) dollars; whatever the amount was.

Q. That is per week? A. Yes; per week.

Q. Now, this time that you tried one job after your injury, you told us that was about two (2) months after the hospital, Mr. Pettersen, and you told us that you got out of the hospital in July, 1950? A. Yes.

Q. So, you apparently tried this one vessel in about September, sometime; is that about right?

A. May I answer you in regard to you asked me about that before—the doctor—and—

Q. Yes; go ahead.

A. If I had any treatments. I went down to the hospital every week and got treatments for some water on my knee. I was discharged altogether.

(Testimony of John O. Pettersen.)

Q. I see.

A. I mean to say when the Doctor said he couldn't do no more for me.

Q. About what time was that? [93]

A. Well, I think that was back in August, I think. I ain't quite certain of it.

The Court: When?

The Witness: In the month of August.

The Court: 1950?

The Witness: Yes, sir.

Q. (By Mr. Holland): And was it along in there sometime that you tried this one job as a mate?

The Witness: Pardon me, your Honor. That would be 1951, wouldn't it, because I was hurt in 1950. This was in August, 1951, sir. Yes.

Mr. Geisness: I think he may be confused there, and I don't know. I may be able to straighten it out.

The Court: He went back and had further treatment.

Mr. Geisness: (To Counsel) If you want to ask it you can.

Q. (By Mr. Holland): Will you tell us, Mr. Pettersen, was that August of this year, about two (2) months ago?

A. Yes, this year when I went for treatments. In this year.

Q. And at the time that you tried to take the job as a mate, that was last fall, was it; last year?

A. No, that—I forgot what month it was. It was

(Testimony of John O. Pettersen.)

when [94] they took the ships out of the moth balls and shipped them out. That was late August, I think.

Q. Last year or this year?

A. No, this year. 1951, because I was under treatment up to August of this year.

Q. All right. Now, Mr. Pettersen, you were injured in May, 1950; that is last year, is that right?

A. Yes.

Q. And you got out of the hospital around sometime in July, 1950?

A. No, that would be in 1950, in August, too. Not 1951.

Q. Yes, so what you meant all the way through is 1950?

A. That is right. That is right.

Q. And you tried this one job sometime in—

A. The first part of 1951 when I tried to go out.

Q. Early this year?

A. Yes.

Q. I see, and you haven't tried anything since that time?

A. No; I have not tried because they don't seem to want you when there is something the matter with you.

Q. You say "they"; the stevedores?

A. The ships. And then, I was to go out on another one but they were told they couldn't use me as long as I had an injured leg and they wouldn't take me.

Q. Have you ever done any night mate's work?

A. No, sir.

Q. Are you eligible for that, Mr. Pettersen?

(Testimony of John O. Pettersen.)

A. Well, that I don't know because you have got to walk over the deck, up and down there, and at night time you ain't very certain on your feet that way.

Q. Isn't that a job they just have to have some officer aboard the vessel; isn't that it?

A. If I don't have to do any climbing up and down, I could do it.

Q. A night mate doesn't have to go down the hatches for any reason?

A. Not unless something very bad should happen, or something go wrong and he probably would have to. I have myself had to do it, but then, I am only talking for myself.

Q. And you haven't made any attempt to get any type of a job, have you? A. No, sir.

Q. Was there a stevedore, or longshore crew on during the day before you came aboard?

A. Yes, they had been working that day.

Q. That was a full, separate gang of men; is that right? A. That night?

Q. That day, before you came aboard.

A. Oh, yes. They come at five (5:00) o'clock in the morning. [96]

Q. I mean before you came aboard. You came at seven (7:00)?

A. Yes; until—up until six (6:00) o'clock that night.

Q. Six (6:00) p.m.? A. Yes.

Q. And was that another gang of men from



(Testimony of John O. Pettersen.)

your employer, the same company, Alaska Terminal and Stevedoring?      A. The same thing.

Q. And you don't have any idea as to whether or not some of those people brought this block aboard that was lying on the deck, do you?

A. That I don't know.

Mr. Holland: No further questions.

**Redirect Examination**

Q. (By Mr. Geisness): Mr. Pettersen, if I recall correct, you said that a block was secured to that strap; is that right?      A. Yes.

Q. And the shackle, I suppose, went through the eye on the small end of that block; is that correct?

A. If I recollect right, the long strap was turned into the pad eye and secured on to the end of the block.

Q. And that would be secured through the eye at the narrow end of the block?      A. Yes, sir. [97]

Q. Do you know when that block was picked up on the deck to be used, to be rigged, whether or not the shackle was attached to the eye of the block at that time?      A. No, I don't.

Q. Do you know where the shackle came from?

A. Well, the only shackles we use on the ship comes from the ship; mostly, except, of course, I don't know nothing about the dock. They use some of the dock shackles on the dock but the shackles we use we generally take out of the ship's locker.

Q. You spoke about "two-blocking" as an expression Counsel used. As I understand, that is



(Testimony of John O. Pettersen.)

when you take up on two (2) winches at the same time and throw a strain on the runners; is that right?

Do you know about "two-blocking"?

A. I don't get which way you mean there.

Q. Mr. Holland used the expression "two blocking."

A. "Two blocking"? That is when the two (2) falls get tight together. That is what Mr. Holland referred to.

Q. In that connection you spoke about that sort of thing happening sometimes in handling cargo.

Now, on this particular job, this heavy lift, you apparently used just one boom to lift with; is that right? A. Yes.

Q. In ordinary cargo work, where you are not handling heavy lift with the jumbo boom, do you have one (1) or two (2) booms?

A. Two (2) with ordinary cargo. [98]

Q. And then you have two (2) winches operating runners that run from the winch to the top of the boom and then down to a hook? A. Yes, sir.

Q. And then one runner goes from the drum on one (1) winch and then up to the tip of one (1) boom and then down to the cargo hook?

A. Yes, sir.

Q. And the other runner goes from the other winch to the top of the other boom and joins at the cargo hook? A. Yes, sir.

Q. And when you are doing that kind of an operation, is there occasion to take in on both of those runners at the same time?

(Testimony of John O. Pettersen.)

A. Oh, yes. You work both of them at the same time.

Q. Is that a very common thing to do?

A. Yes, it is when you get your load clear of the ship's deck, you go ahead on one and come back on the other, and then you come down in the hold together.

Q. I am not sure I am clear on that and if I understand you exactly.

Do I understand that when you are doing that kind of an operation the winch driver has occasion from time to time to bring in both the runners at the same time? A. Yes.

Q. Or to let go of both the runners at the same time? [99] A. Yes.

Q. And have you known it to happen on that kind of an operation where the winch driver is bringing in both of the runners at the same time that he brings them in too far and throws one winch against the other?

A. I have seen it; yes, sir.

Q. Now, then, where you are using just the jumbo boom as you were here, and you have got a part of the starboard guy to swing the boom with, do you have occasion then to take in with both winches at the same time?

A. No, not necessarily. You have to come on one and back up on the other.

Q. Now, another thing, when you are handling ordinary cargo, not with the jumbo boom but with

(Testimony of John O. Pettersen.)

the two (2) booms, is the operation of the winches a fast operation?

A. Yes, they are pretty fast.

Q. And when you are using the port and starboard guys on a jumbo boom, is the operation of that kind a fast or a slow operation?

A. As a rule they generally go easy with them all the time.

Q. Have you ever known—Start that over. Where the jumbo boom is being used, have you ever known a winch driver to take in on both the port and starboard guys at the same time and throw one winch against the other?

A. No, sir; I don't.

Q. And in performing your duties as longshore foreman, do you have occasion from time to time to be in the bight of a runner, or guy line?

A. Well, we get so that we figure we are safe anyway when we rig the gear.

Q. What do you mean by that?

A. Well, now, like we had this guy here, there is only one place for us to stand to land. It was right up against the "cat" where it was, and, naturally, when we rigged the gear, and the gear we use, we figure it is equivalent to what we are supposed to have. We have no way of testing it or anything.

Q. Do I understand you correctly to mean: Do you figure that the gear is adequate to do the work, and that you are safe because it won't give way?

A. Absolutely; that is the way we figure.

Mr. Geisness: I think that is all.

(Testimony of John O. Pettersen.)

Recross Examination

Q. (By Mr. Holland): Mr. Pettersen, Mr. Geisness was asking you about a winch driver coming up on both falls with cargo? A. Yes.

Q. In this case the man at the forward winch had the same kind of winches and handles to work with as he would have had with cargo, didn't he? It is the same operation? A man stands with a handle in his hand and works them? [101]

A. On a guy line, if you are going to heave, you pull. You have got to go up on that side and come back on the other. If he used them both to come up, he is naturally going to get a strain on it.

Mr. Holland: No further questions.

Mr. Geisness: I have nothing further, if the Court please.

The Witness: Thank you.

(Witness excused.)

Mr. Geisness: I will call Mr. Woll.

WILLIAM R. WOLL,

called as a witness for and on behalf of Libellant, upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Geisness): Please state your full name.

A. William R. Woll.

Mr. Holland: Is it agreeable with your Honor to remove Libellant's Exhibit 1 from the deposition to which it was first attached?



(Testimony of William R. Woll.)

The Court: Yes, because it has a new number now, Respondent's Exhibit A-2.

Mr. Holland: No; I think it is Libelant's Exhibit Number 1.

The Clerk: We have Respondent's A-1 and that is the block.

Mr. Geisness: It doesn't matter so long as it is marked.

The Clerk: Do you want it A-2?

Mr. Geisness: It doesn't matter to me.

Mr. Holland: It came in with Libelant's deposition and I thought it was marked as Libelant's exhibit.

The Court: I think the Court called it Respondent's Exhibit A-2.

Mr. Geisness: I think it should be Libelant's exhibit. [103]

Mr. Holland: That is all right. We will leave it that way.

The Clerk: Respondent's Exhibit Number A-2 marked for identification.

Mr. Holland: That is agreeable.

Mr. Geisness: Actually, I offered it.

The Court: As long as it is in the record. I think the record may show that it was marked Respondent's Exhibit A-2 upon the statement of the Court.

(Respondent's Exhibit Number A-2 marked for identification and admitted in evidence.)

Mr. Holland: That is agreeable.

(Testimony of William R. Woll.)

While we are on the subject, if the Court please, I ask that the statement, which was in that same deposition, be marked as an exhibit.

It was marked and I offered it in evidence. That was the statement of Mr. Oldham, a signed statement.

The Court: That is Respondent's Exhibit A-2?

The Clerk: I don't know, because I didn't see it.

Mr. Holland: I had that statement down as Respondent's Exhibit A-2.

The Clerk: The statement will be Respondent's Exhibit A-2 and the drawing Libelant's Exhibit 1.

(Libelant's Exhibit Number 1 and Respondent's Exhibit Number A-2 correctly marked for identification [104] and admitted in evidence.)

Q. (By Mr. Geisness): State your full name, please?

A. William R. Woll.

Q. Where do you live, Mr. Woll?

A. Belview, Washington.

Q. How long have you lived in and around Seattle?

A. I was born in Seattle.

Q. What is your occupation?

A. I am a longshoreman.

Q. How long have you followed that occupation?

A. Since the Army. I was discharged in 1945 and I have been there ever since working.

(Testimony of William R. Woll.)

Q. Were you working aboard the *Susitna* in 1950 when Mr. Pettersen was injured?

A. Yes, sir; I was.

Q. Were you working at the same hatch number two (2) where he was working? A. Yes, sir.

Q. Where were you standing about the time he was hurt?

A. Well, I was at the rear of the "cat" on the outside of the ship. That is, on the port side of the ship.

Q. Do you know about how far you were from Mr. Pettersen, approximately?

A. Approximately, five (5) feet; maybe; in the vicinity thereof. [105]

Q. Was the loading of a caterpillar tractor that size and weight a very common loading operation?

A. Yes, sir; it is.

Q. Do you remember that there was a snatch block secured to a pad eye somewhere near the hatch combing? A. Yes, sir.

Q. And that one of the port, or off-shore, guys went through that snatch block? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Was that the ordinary and usual type of snatch block for that purpose?

A. Yes, I would say it was. We wouldn't start an operation unless we were sure that the snatch block would be the proper one to use for that type of lift.

Mr. Holland: The last part of that question (answer) is objected to as a conclusion of the witness.

The Court: Sustained. It may be stricken.

(Testimony of William R. Woll.)

Q. (By Mr. Geisness): Were you hurt at all in the transaction? A. No, sir; I was not.

Q. Do you know how it happened that you were not hurt? Can you account for it? [106]

A. As I look back at it now, I was on the port side of the ship. A fellow named Charlie Logues was between me and the man who was hurt. The guy, when it broke, or whatever it was, the block when it did break, it flew away from me, not toward me. They were on the inside of me, I would say.

Q. Towards the center of the ship?

A. Towards the dock; yes.

Q. What did you do immediately after this happened?

A. Well, I was concerned about the man who was hurt, so I started taking care of him, finding out how serious and how he was hurt.

Q. I think I will go back for a minute.

Do you remember now just exactly how that thing was rigged?

A. Well, as near as I can remember, it was on what we call the boom line, and the cable run from the winch on the port side of the ship through, I believe, a block attached to a pad eye, and then through the block which was broken, and on over to the railing where a block was also attached.

Now, that is to the best of my knowledge. I do know from past experience that the rigging—

Mr. Holland: Now, if the Court please, this witness should confine his questions (answers) to what he observed this time; not past experience.



(Testimony of William R. Woll.)

The Court: That is correct, Mr. Woll. [107]

The Witness: Yes, sir.

Q. (By Mr. Geisness): Just tell us this:

As that operation progressed, was it conducted in the usual and ordinary way that you conduct such operations on a ship? A. Yes, sir.

Q. Now then, if you will go ahead and tell us what happened afterwards; what you did?

A. Well, as it were, at that particular time I was on the rail side of the caterpillar.

We were trying, and I believe it had been lowered, or we were just approximately lowering it to the back and getting it forward, or as near as possible to the former piece of equipment as had been put aboard.

As I was standing there—you have to jog a heavy piece like that to get it in place. Sometimes there is an inch or two clearance you have.

This fellow Logue and I were on the rear end of the caterpillar, and we were trying to get it into this particular position that the foreman wanted it.

That, of course, is when this thing took place.

Q. What did you do immediately after it happened?

A. Well, when it happened the "cat" hit the deck and then Logue, working inside of me, got to him first and then I got there, and we tried to find out from him, but, at that time as I recall, he was out. [108] That is, he was unconscious—not then conscious.

Q. And what did you do with him?

(Testimony of William R. Woll.)

A. Then, of course, we had to wait for orders as to what to do with him because of safety rules, and we got the basket aboard and placed him aboard and I rode aboard with the man to the dock and waited there until the ambulance came.

Q. How long was it before the ambulance came?

A. I couldn't say, now. Perhaps twenty (20) minutes. It was approximately lunch hour, so twenty (20) minutes or so.

Q. Were some of the other fellows on the dock with you?

A. There were several men, a number of men; most of them were there.

Q. Up to that time had you tried to see and ascertain what had happened?

A. No, I couldn't say that I was, because I was more interested in the man than anything else.

Q. When you did get back on the ship, did you look to see what happened?

A. Well, it was the lunch hour, as I formerly stated, and by the time I saw he was being taken care of, by the ambulance crew, I went to dinner and didn't get back then for perhaps an hour.

Q. When you got back, was the thing rerigged at that time or was it rerigged after?

A. I couldn't make a statement on that. I couldn't say. I don't actually recall whether it was rerigged or not. I do know we went [109] ahead and completed the operation.

Q. Did you ever see any of the remains of the block?

(Testimony of William R. Woll.)

A. No; I don't know what happened to the block.

Q. Well, did you see any parts of a broken block around? A. I didn't see it; no.

Q. Did you see any—do you remember when you got back whether the straps were in place in the pad eye at the combing?

A. I believe there was some discussion that the straps were there. I am quite sure they were there, but I don't recall seeing the straps myself.

Mr. Holland: I move the last answer be stricken as evidently hearsay information on the part of this witness.

The Court: I think, taking the answer as a whole, it may stand.

Q. (By Mr. Geisness): Do you know whether or not the runner broke? By runner, that guy?

A. The guy, the cable on the winch?

Q. Yes. A. No, sir; it did not break.

Q. In your experience as a longshoreman, do you, when you take a block, when you select a block—well, I guess we can safely presume—you try to select blocks suitable for the purpose you intend to use them for; is that right? A. Yes, sir. [110]

Q. Now, do you inspect them from time to time as the work progresses to see whether they are defective or not, or do you assume they are all right?

A. We assume they are all right. There may be a pile of them. We assume they are all right, because the company evidently checks on those; yes.

Q. How about such things as straps, or wire rope; do you check them?



(Testimony of William R. Woll.)

A. The straps we do keep check on the straps; yes, sir.

The Court: When you are referring to the straps, what straps do you mean?

Mr. Geisness: I am referring now to straps such as were used here to fasten this snatch block to the pad eye.

Q. (By Mr. Geisness): Is that what you meant by "straps" too? A. Yes, sir.

Q. That is a piece of wire rope, really, isn't it?

A. Yes, sir; it is.

Q. One thing you might clear up for us in that connection:

Is that piece of wire rope in a loop, or does it have two (2) ends?

A. There is a loop on either end.

Q. I see. A. There are two (2) loops.

Q. You have an eye spliced on either end? [111]

A. Yes.

Q. And you remember, I suppose then—Maybe I better not suppose.

How did you fasten the strap to the pad eye?

A. You would run—In this case, I believe, we ran the strap, one end of the strap, through and hooked both eyes into a shackle and into the snatch block.

Q. So that the pad eye was in the bight of that strap?

A. The pad eye was in the bight of the strap; yes, sir.

Q. Had you had previous experience working



(Testimony of William R. Woll.)

with Mr. Petterson?

A. Yes, sir; I have.

Q. Very much?

A. Quite a bit. Usually when I worked with the Alaska Steamship Company I was most often working for Captain Petterson; yes, sir.

Q. On regular lifts?

A. On all type of work.

Q. Can you tell us whether or not he was a skilled, expert rigger?

A. I believe he is. The man's reputation—

Mr. Holland: Just a moment. I don't think, if the Court please, there has been any foundation laid for qualifying this man as an expert along the lines of that question.

The Court: Objection sustained. [112]

Q. (By Mr. Geisness): And in your experience working with Mr. Petterson, do you remember any accidents that arose from trouble with the gear before this one?

Mr. Holland: If the Court please, I think that is immaterial.

The Court: Yes. Objection sustained.

Mr. Geisness: That is all.

#### Cross-Examination

Q. (By Mr. Holland): Mr. Woll, you just told us something about, you said, when you were working for Alaska Steam you quite often worked with Captain Petterson?

A. I have in the past, yes, sir.

Q. And that is doing stevedoring work?

A. Yes, sir.

(Testimony of William R. Woll.)

Q. And at the time of this accident, who was your employer?

A. Well, I don't know. I never paid much attention to that. Usually we don't.

By that I mean: When I worked aboard the ship, I signed a card, as we all do, and it is really not too important to us, as a rule.

Q. You are paid off from a central office which covers all your work? [113]

A. That is true.

Q. Isn't it a fact that you were an employee of Alaska Terminal and Stevedoring Company?

A. It would be that; yes, sir.

Q. And, when you told us a while ago about working for Captain Petterson for Alaska Steam, you mean aboard their ships but for Alaska Terminal?

A. Yes, sir.

Q. And Captain Petterson was in charge of this hatch to do the rigging?

A. That is true; yes, sir.

Q. And, as far as you observed, or saw, none of the ship's officers had anything to do with the rigging, or the way the work was done in this area, did they?

A. No; the ship's officers had nothing to do with it.

Q. When you go in with the stevedores, you take over the area and do your job and get out?

A. I take my own particular orders from my hatch boss.

Mr. Holland: Yes. I have no further questions.

Mr. Geisness: I have nothing further.

(Testimony of William R. Woll.)

The Court: That is all.

Mr. Geisness: May the witness be excused?

Mr. Holland: No objection.

The Court: He may be excused.

(Witness excused.) [114]

**C. W. LOGUE,**

Called as a witness for and on behalf of Libellant,  
upon being first duly sworn, testified as follows:

**Direct Examination**

Q. (By Mr. Geisness): State your name, please.

A. C. W. Logue.

Q. Do you live in Seattle, Mr. Logue?

A. Yes, sir.

Q. About how long have you lived in Seattle?

A. Approximately thirty (30) years.

Q. What is your occupation?

A. Longshoreman.

Q. How long have you been following that occupation?

A. Nine (9) years.

Q. Were you working aboard the steamship *Susitna*, May 9, 1950, when Mr. Pettersen was injured?

A. Yes, sir.

Q. Were you working at the number two (2) hatch where he was hurt?

A. Yes, sir.

Q. Do you remember about where you were in relation to him at the time the accident happened?

A. Alongside of him; to the left of him.

Q. Pardon? [115]

(Testimony of C. W. Logue.)

A. Alongside of him, to the left of him; right next to him.

Q. That would be to the port of him?

A. Off shore from him.

Q. Off shore from him?

A. Yes, sir.

Q. You were farther away from the center of the ship than he was, a little bit?

A. That is right.

Q. About how close to him were you?

A. Arm's length.

Q. Do you remember what you were doing just before the accident happened; or just at the time the accident happened?

A. At the time we were both guiding the vehicle into place, steadying the caterpillar into place.

Q. Were you injured in any way yourself?

A. Not injured when Captain Petterson hit me and knocked me. Other than that I wasn't injured.

Q. The tackle didn't hit you at all?

A. No.

Q. Do you remember a snatch block secured to a pad eye near the combing on the port side?

A. Yes, I do.

Q. Was that a snatch block something like this one?

A. Very similar.

Q. Marked here Respondent's A-1. You don't know what it [116] is marked, but it is marked that way.

A. Very similar to that.

Q. Is that the usual type of block to be used on that operation?

A. On that particular dock and company; yes.



(Testimony of C. W. Logue.)

Q. Do you know whether it was the property of the stevedoring company or the ship?

A. Not for sure; no.

Q. Up until the time the accident happened, had the operation been proceeding in a usual or an unusual way?

A. The usual way.

Q. Anything out of the ordinary at all?

A. Not to my knowledge; no.

Q. After the accident happened, what did you do?

A. I pulled Captain Petterson out from underneath the caterpillar and helped placed him upon the stretcher.

Q. And did you go to shore with him then?

A. No, I stayed aboard.

Q. Did you by any chance take a look to see what might have caused the accident, to see what had happened?

I will ask you whether the block that we just mentioned as being secured to a pad eye at the combing on the port side was still there?

A. There was a piece there; yes.

Q. There was? [117]

A. To my knowledge, at the time there was a piece there.

Q. Do you know what happened to the piece?

A. No, I don't. It was laid at the corner. When we took it away from the strap it was laid right at the corner of the hatch.

Q. Do you know what part of it, the block, that was?

A. Yes, I do.

(Testimony of C. W. Logue.)

Q. Can you tell us? / A. Yes, I think I can.

Mr. Geisness: I wonder, maybe it would be all right to refer to this at the same time, the top part here. I have the eye at the top and below that is the swivel.

The Court: You are referring to Respondent's Exhibit A-1?

Mr. Geisness: Yes.

Q. (By Mr. Geisness): First is the "eye." Is that what you call it at the top? A. Yes.

Q. And below that is the swivel portion?

A. Yes.

Q. And I don't know what you would call something like a jacket below that. Probably a jacket.

A. The jacket; yes.

Q. Or case, or casing?

A. Good enough. [118]

Q. We will call it the casing. Now, using those names, can you tell us, generally, what part remained?

A. The lower part to the left there (pointing). (Counsel indicates on block.) That way.

Q. Where I am pointing now?

A. No, at the base.

Q. Here?

A. No, at the base of the housing.

Q. Here?

A. No, the base, at the bottom.

Q. Farther down? A. Farther down.

Q. In here somewhere?

A. To the bolt, down at the extreme bottom.

(Testimony of C. W. Logue.)

Q. Down here?

A. Yes. Just above your finger.

Q. In here?

A. It snapped right in there.

Q. There is a bolt that goes through the wheel?

A. Yes. It snapped just back of your hand there to the base of the forward nut there.

Q. Come down here and show us.

(Witness approaches exhibit and indicates.)

A. It broke right across here.

The Court: Refer to that some way. [119]

The Witness: It was right across in there. (Indicating.)

The Court: Would that be the casing that covers the pulley wheel?

The Witness: That is what I would call it; yes, sir.

Mr. Geisness: And the witness indicated a line running across the short axis of the block at a point half way between the spindle of the shiv and the two (2) nuts at the base of the block.

The Court: I think that is reasonably accurate.

Mr. Geisness: I think so.

The Court: Would you say that description is correct?

The Witness: Well, yes, as near as my memory—will go back.

The Court: Serves you?

The Witness: Yes.

Q. (By Mr. Geisness): Do you know what happened to the remains of the block?

(Testimony of C. W. Logue.)

A. No, I don't. We laid it right on the corner and replaced it. We replaced the block to the best of my knowledge and then we went to lunch, and I don't recall. We started in working when we came back from lunch.

Q. Were the straps intact? Were they broken, or not?

A. No. The bigger half was still there when we left for [120] lunch.

Q. But I wanted the record—

A. The straps—we had to take it off the strap.

Q. And was the runner broken?

A. Pardon?

Q. The guy, or the wire rope, that went through the block, had it parted?

A. No. No.

Q. Did you help rig the new block then?

A. Yes.

Q. Do you know where the block that broke came from before it was rigged?

A. No, not for sure. No. I know that there was some time spent there looking for blocks. Where they came from, I don't know. There was a little time spent there that they were trying to locate blocks.

The Court: After the accident or before?

The Witness: Before.

Q. (By Mr. Geisness): Do you know whether there is any way to tell whether a block used on the ship is part of the ship's store or whether it comes from the dock?



(Testimony of C. W. Logue.)

A. No, not for sure. Not for sure; no.

Q. How do you tell, when you get through, whether a particular block came from the dock or not so that you could return it? [121]

A. That is up to the foreman, or gear man. If they ask us to send the gear ashore, whatever is laying around, we send it ashore. That is up to the gear man, or foreman, to segregate it.

Q. You as a working longshoreman don't have anything to do with that?

A. No. It all looks alike.

Mr. Geisness: I believe that is all.

Cross Examination

Q. (By Mr. Holland): Mr. Logue, referring to Respondent's Exhibit A-1, there is on this exhibit one moveable part which, presumably, is the part that locks the guy on to the snatch block; is that right? It seems to be on a spring. Is that the part that locks the guy into the block after it is put in?

A. Yes, I see what you mean. Yes.

Q. Was that the part of the block you saw still attached to the strap?

A. Well, if I remember right—

The Court: You may go down, if you wish.

(Witness approaches exhibit.)

A. (Continuing) This part here, this piece right in here, was gone.

Q. (By Mr. Holland): I see. That is what I wanted to find out; what was left.

Mr. Holland: For the record may I state that

(Testimony of C. W. Logue.)

the [122] witness indicated all of the shell which covers the shive down to the lines we have noted previously in the record was the part that was gone.

Mr. Geisness: On one side.

Mr. Holland: Yes.

Q. (By Mr. Holland): (Continuing) And do you call this the open side of the block? Do you call this the open side rather than the under side, because this is the side where the guy goes in?

A. That is right.

Q. And, being the side where the guy goes into the block, we will call that the open side, and what you are saying is that the greater portion of the shell covering the shive—

A. That is the part we took off.

Q. That is the part that was missing; is that what you told us; the part you indicated?

A. What you have in your hand was gone.

Q. Was gone; yes.

The Court: The lower part was gone of that casing, or shell, where the two (2) nuts are at the bottom?

The Witness: Yes. Yes.

The Court: That was still there?

The Witness: Yes.

Q. (By Mr. Holland): And the shive, or wheel, itself? [123]

A. I don't know about the wheel. The under part was there. I don't recall the wheel.

Q. The under part, meaning the back part of the block?

A. Yes. I don't recall the wheel.

(Testimony of C. W. Logue.)

The Court: Is the under side solid?

Mr. Holland: I think it is, your Honor.

The Court: It is solid?

Mr. Holland: All the way up.

The Court: But it has an opening in the casing?

Mr. Holland: Yes.

Q. (By Mr. Holland): Now, just looking at Respondent's Exhibit A-1, Mr. Logue, and noting that underneath the locking device that appears to hold the guy in place there is a little space where the locking device fits in, isn't there? A. Yes.

Q. When you push the locking device down it drops out of that place and when you push it back it comes out? A. Yes.

Q. It is apparently on a spring?

A. Yes. There is no spring that I can see.

Q. It is not impossible, is it, that by some inadvertence the guy could have been caught in that little space where the locking device fits in? It is possible, at least it is possible, that the guy could have been caught in this little space where the locking device is supposed to [124] fit in and pulled the top shell off the block? Is it reasonable to say that?

A. That is less than one-half ( $\frac{1}{2}$ ) inch, and your ordinary line is three-quarters ( $\frac{3}{4}$ ) inches, or better; I don't just recall.

Q. Well, assuming that the guy didn't fit completely. Assuming that happened, the guy didn't get under, fit completely, into the recess, this part where the locking device goes—

A. I see what you mean.

(Testimony of C. W. Logue.)

Q. The guy could possibly catch up in there?

Mr. Geisness: If he knows.

A. If there was slack, but not if it was tight.

Q. (By Mr. Holland): The particular guy that ran through the block in this case was slack from time to time in the operation of the jumbo boom?

A. Not on a heavy lift. She has got to be tight.

Q. Both port and starboard?

A. When you are pulling she has to be tight.

Q. This particular guy doesn't hold the load; this is the guy that guided the jumbo boom port and starboard. This guy that we are talking about, that guy usually was the one that guided the jumbo boom port and starboard?

A. This had the pull of the caterpillar to my knowledge.

Q. It had the weight on it?

A. It had the forward pull. [125]

Q. In other words, the whole weight of the caterpillar was on the guy that ran through this block that we have been talking about?

A. It would be on two (2) blocks, not one (1).

Q. Which winch controlled the guy that ran through the block that gave way?

A. Well, it should be the port.

Q. The forward or aft? A. The forward.

Q. I see. What did the aft winch do, if anything?

A. Well, at that time you were pulling forward. You couldn't use an after winch on a forward pull on the rig we had.

Q. Wasn't the weight of the load itself on the



(Testimony of C. W. Logue.)

guys, or the runners, which were controlled by the after winches? Which runner held the weight?

A. Which runners?

Q. Yes. Which winches controlled the weight or object, the forward or after?

A. To my knowledge the forward port winch.

Q. In other words, the load was on that winch?

A. That would be the way it was rigged. That is the way—in my memory, that is the way it should be.

Q. And when you are moving the jumbo boom from dock side to where you had it at the time of the accident, what controls that movement?

A. Now we had a boom line on that block; not a jumbo. A [126] jumbo is the lift.

Q. Well, maybe we don't understand each other at all.

A. You were pulling forward. You were pulling this eighteen (18) ton lift.

Q. Side ways over to the port side?

A. No. You were going forward.

Q. Oh, you were going forward.

A. It was in place.

Q. I see.

A. Ready to go forward into the position. The jumbo had brought it from the dock to the port side across the hatch, to my knowledge.

Q. Well, I think this questioning started when I asked you if, during some part of the operation, the guy would be slack and the starboard guy would be taught; isn't that the way it operates?

A. No. The strain was on it and you just take up

(Testimony of C. W. Logue.)

the slack and see that everything is going and then you move, but everything has to be in place when she starts to go.

Q. I am speaking of when the boom is going across the ship.

A. The boom had been across the ship.

Q. During some part of that operation the guy that ran through this particular block would be slack going one way or the other?

A. No, because you were using a boom line on that rig. You [127] were using a boom line which is down on deck.

Q. And is the boom line the one that caught Mr. Pettersen?

A. That is the one.

Q. Is the boom line always taught?

A. When you grab ahold with the boom line, that is when you are pulling.

Q. But when you are letting out on that, that line is slack on the boom line?

A. That is possible; yes.

Q. The particular line that went through this block during some part of this operation does become slack when you are letting out on the boom line?

A. I see what you mean now. Yes. But the jumbo had nothing to do with it.

Q. I am just talking about the guy that ran through this block.

When this particular guy hit Mr. Pettersen, did it strike the tractor at all, or did it get that far?

A. It had to get that far.

(Testimony of C. W. Logue.)

Q. Was he right by the tractor? You were too, of course.

A. I couldn't say that it hit the tractor. That is—no, I couldn't say that because I wouldn't know. Everything happened so quick.

Q. And when the block gave way this line that hit Mr. [128] Petterson became straight and taut then, didn't it, running past the tractor in some direction? A. No.

Q. What happened? Did it all become slack?

A. Well, at the time we hollared and the winch driver on the boom line—everything went slack right now. It is possible that that could have hit the upper part of the tractor, but I wouldn't say.

Q. Before it went slack, you mean?

A. Yes.

Q. Could you see the winch driver from where you were standing?

A. Well, I was watching the hatch tender; the man who gave the signals.

Q. You had your hands on the tractor and helped guide it? A. Yes.

Q. And from the position you were in you could do it best?

A. Yes. He was standing right over, oh, within eight (8) or ten (10) feet away from us.

Q. The hatch tender that was giving the signals, and Mr. Woll, was standing near you and also had his hands on the tractor.

A. I didn't see that but I know he was at the left of me. To the best of my knowledge he was to the left of me.

(Testimony of C. W. Logue.)

Q. In position helping?

A. Yes; to the left of me, four (4) or five (5) feet at the most. [129]

Q. And then at the time, was Mr. Pettersen also helping in the placing of that in place or just standing there?

A. Well, he was standing there, but he was watching how this piece of machinery was going in. You only had a few inches on each side and he was watching how it was heading on the boom.

Mr. Holland: That is all.

Mr. Geisness: I think I have nothing further. May he be excused?

The Court: I want to ask a question or two.

Did you assist in rigging the boom ~~the~~ the blocks, setting up the blocks?

The Witness: The blocks? Yes.

The Court: Did you happen to have anything to do with setting up this particular block?

The Witness: Well, possibly I could have, but I don't recall that far back whether that was the one I worked on.

The Court: The gang you were with did set up the blocks?

The Witness: Oh, yes, we all jump around.

The Court: That is all.

Mr. Geisness: May he be excused?

Mr. Holland: No objection.

The Court: Yes; you may be excused.

(Witness excused.)



Mr. Geisness: I may have another witness. I wonder [130] if we can have a recess. I don't know that he will contribute anything here or not.

The Court: Yes. We will take a fifteen minute recess.

(Whereupon, at 3:11 O'clock, p.m., a recess was had until 3:38 O'clock, p.m., October 31, 1951, at which time, Counsel heretofore noted being present, the following proceedings were had, to-wit:)

Mr. Geisness: We have agreed that two (2) medical reports may be submitted without necessity of calling the doctors.

May I have them marked for identification?

The Clerk: Libelant's Exhibits Numbers 2 and 3 marked for identification.

Mr. Holland: Just for the record, this should be Libelant's 2.

Mr. Geisness: Do you want your own report labeled?

Mr. Holland: Yes.

Mr. Geisness: I will submit it, though.

The Clerk: This is Respondent's?

Mr. Holland: Yes.

The Clerk: Libelant's Exhibit 2 and Respondent's Exhibit A-3 marked for identification.

(Libelant's Exhibit Number 2 and Respondent's Exhibit Number A-3 marked for identification.)

The Court: It is stipulated that these medical reports [131] are to be considered as equivalent to

the testimony that would be given by doctors were they called; is that correct?

Mr. Holland: Yes, your Honor.

Mr. Geisness: Yes, your Honor.

The Clerk: Are they admitted in evidence?

Mr. Geisness: Libelants will offer Libelant's Exhibit 2.

Mr. Holland: No objection.

Mr. Geisness: Do you want to make your offer?

Mr. Holland: And Respondent will offer Respondent's A-3.

Mr. Geisness: No objection.

The Court: They may be received.

(Libelant's Exhibit Number 2 and Respondent's Exhibit Number A-3 admitted in evidence.)

Mr. Geisness: It is also stipulated that Dr. Ernest M. Burgess made Libelant's Exhibit 2, and Dr. J. W. Miller made Respondent's Exhibit A-3, and both are orthopedic specialists.

Mr. Holland: That is agreeable.

The Court: The record may so show.

Mr. Geisness: I wonder if it would be appropriate to read the pertinent parts of these.

The Court: If you wish.

Mr. Geisness: I think I will. I will read first from Respondent's Exhibit A-3, because that is the earlier report made by [132] the attending physician, Dr. J. W. Miller, of The Mason Clinic.

Mr. Holland: Before proceeding, may I advise the Court that I have two (2) witnesses in the

court room but since there are no other witnesses on the stand I presume it is agreeable for them to remain.

The Court: Do you have any objection?

Mr. Geisness: No, I think not.

The Court: You may proceed.

"This is to report to you again regarding Mr. John O. Petterson who sustained an injury to his right lower extremity on May 29, 1950. As a result of this injury, Mr. Petterson had a fracture of the right fibula at the junction of the middle and lower one third. More important there was marked soft tissue damage to the skin and underlying subcutaneous tissues over a rather wide area at the point of impact. As a result of the necrosis of the skin and subcutaneous tissues, over the lateral aspect of the leg, a debridement and later skin grafting was necessary.

"At the present time, Mr. Petterson complains of moderate discomfort at the [133] fracture site. In addition, he complains of pain in the right shoulder which is on the basis of mild limitation, a so-called periarthritis on the basis of his inactivity as a result of the leg injury. There has been very little progress in the last six to eight weeks."

This is January 11, 1951.

Then I will omit the report which was a detailed report of the examination findings.

"X-rays were obtained on the date of his last visit, January 9, 1951, of the right lower extremity. These x-rays show complete union and good position of the fractured fibula."

"It is the feeling of this examiner that this man's condition is now fixed. No further treatment is indicated. Because of his age, I question whether he will be able to return to active work although he could handle a sedentary type of job any time in the near future. I feel because of the above mentioned findings in the right lower extremity, that a partial permanent disability award of 25% as of amputation of [134] the right lower extremity at the knee joint level will cover the residual difficulty that he has in this limb. I feel that his case may be closed."

In the Dr. Burgess report I am going to skip the part classed "History." We have that from the witnesses. And "Present Complaints"; which we have. "Past Medical History" and the details of the physical "Examination" and I will start with the section "X Rays."

"Two views of the right lower leg to include the ankle evidence a healed fracture at the junction of the distal and mid  $\frac{1}{3}$ , right fibula. There is firm union with slight deformity and overriding. No gross traumatic arthritis is noted in the ankle joint.

"Two views of the right shoulder and shoulder girdle evidence some mild demineralization of the bony structure adjacent to the joints. Productive and arthritic changes are present in the acromioclavicular joint. There is no aberrant calcification present.

"Conclusions: This elderly longshoreman has sustained injuries which have [135] resulted in some permanent disability involving the right lower ex-



tremity and the right shoulder area. There is no further treatment indicated at this time. His recovery has been as satisfactory as could be expected in view of the types of injury sustained and their severity. In my opinion he will never be able to return again to his former occupation. While his age is definitely a contributory factor in this matter, the injuries and subsequent disability are primarily responsible for his present inability to engage in longshoring or heavy work at sea.

"As to the actual permanent partial disability present resulting from the injuries, I would rate this disability as follows: Right lower extremity, 35% of an amputation rate at the knee. Right upper extremity, 20% of an amputation rate at the shoulder."

I have no objection to your reading any other parts that you might consider material.

Mr. Holland: No. That is agreeable.

Mr. Geitness: The Plaintiff, or Libelant, rests, if the [136] Court please.

The Court: You may proceed.

Mr. Holland: If the Court please, at this time I would like to make a motion for dismissal of the cause upon the ground that the Libelant has failed to sustain the allegations of his Complaint, and secondly and particularly upon the grounds set forth in the trial memorandum of authorities which I filed prior to the noon hour.

Our theory of defense, as it relates particularly to the legal problem raised here, I set forth briefly in my opening statement and unless the Court

wishes both of us to go into this in greater detail at this time, it may be that the Court would wish to reserve full argument on this question until the close of the entire case.

The Court: The record may note your motion. The Court would not be disposed to grant it at this time. You may renew it upon completion of the case.

Mr. Holland: Thank you, your Honor.

I will call Mr. Bjornson, please. [137]

**GILBERT BJORNSON,**

Called as a witness for and on behalf of Respondent,  
upon being first duly sworn, testified as follows:

**Direct Examination**

Q. (By Mr. Holland): State your name, please.

A. Gilbert Bjornson.

Q. Where do you live, Mr. Bjornson?

A. 6739 Twenty-Sixth Northwest.

Q. What is your occupation?

A. Stevedore foreman.

Q. How long have you followed stevedoring?

A. Oh, pretty near, about since—steady since about 1922.

Q. Has that been in this area?

A. Yes; Seattle.

Q. Have you on any occasion ever done work aboard Alaska Steamship Company vessels?

A. Yes, sir.

Q. Do you recall an accident aboard the *Susitna* on May 29, 1950, when Captain Pettersen was injured?

A. Yes, sir.